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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 505

JAMES H. MULFORD ET AL., APPELLANTS

vs.

NAT SMITH ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA

FILED DECEMBER 5, 1938.

SUPREME COURT OF THE UNITED STATES

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In the District Court of the United States for the Middle District of Georgia, Valdosta Division

In Equity No. 97

JAMES H. MULFORD ET AL., PLAINTIFFS

v.

NAT SMITH ET AL., ORIGINAL DEFENDANTS

and

UNITED STATES OF AMERICA, INTERVENING DEFENDANT

PLEADINGS OF PARTIES AND ORDERS OF COURT

On the 27th day of July 1938, plaintiffs filed, in the Superior Court of Lowndes County, Georgia, their bill of complaint, with exhibits attached thereto, the same being as follows:

GEORGIA, LOWNDES COUNTY.

To the Superior Court of said State and County:

The petition of James H. Mulford and others similarly situated whose names are included in an Exhibit to this petition, and others similarly situated who may intervene in this cause respectfully shows;

1.

That the names of all of petitioners are written on a sheet or sheets attached hereto marked Exhibit "A" and made a part of this petition.

2.

That the parties herein named as defendants are certain tobacco warehousemen doing business in the City of Valdosta, Lowndes County, Georgia, each of whom are residents of said State and County, their names being as follows: Nat Smith, doing business as Nat Smith Warehouse, and also as Nat Smith Brick Warehouse, B. B. Saunders, doing business as B. B. Saunders Warehouse No. 1 and also as B. B. Saunders Warehouse No. 2, Murrell Holderby and J. R. Townsend, doing business as Savannah Warehouse, and Lee Moore doing business as Alliance Warehouse.

3.

That all of petitioners are residents either of the State of Georgia or of the State of Florida.

4.

That plaintiffs have mutually agreed among themselves to join together in this suit against said warehousemen instead of filing separate suits, for the reason that, as is hereinafter shown, each plaintiff is asserting the same right against each defendant, each seeks the same relief against each defendant, and the relief sought by each depends on the same issues, requires the same evidence, and will lead to the same decree; and by joining together in this action, a multiplicity of suits will be avoided, large court costs and other expenses will be saved, the necessity of many separate trials will be obviated, and the convenience of justice will be promoted.

5.

Petitioners further show unto the court that they are separately engaged in general farming and that, among other things, each grower raises and produces what is commonly called flue-cured tobacco, and that the customary method of marketing said tobacco is through tobacco warehouses such as are operated by each of defendants.

6.

That it is the custom and it is the intention of plaintiffs to market their 1938 crop of tobacco at the said warehouses in Valdosta, and that practically the only method or means that petitioners have of marketing their tobacco is in said warehouses or similar warehouses.

7.

That each of said defendants operates in the City of Valdosta, Lowndes County, Georgia, one or more auction tobacco warehouses where during the tobacco season farmers haul and place their tobacco to be sold at public auction, and that during the tobacco season of 1938 which will begin July the 28th, 1938, and continue until approximately September 1st, 1938, each of said defendants will secure and have at his warehouse tobacco buyers who will at public outcry buy in such tobacco as is offered for sale by said farmers who have tobacco for sale.

8.

Petitioners further show unto the court that Congress passed an Act which was approved February 16th, 1938, entitled "An Act to Provide for the conservation of natural soil resources and to produce an adequate and balanced flow of agricultural commodities in Interstate and Foreign Commerce and for other Purposes", com-

monly known as the "Agricultural Adjustment Act of 1938", and that among other things said Act contains provisions respecting the marketing of tobacco and authorizing the Secretary of Agriculture under certain conditions to put into effect certain marketing quotas therein referred to, certain provisions of which bill materially regulating the production and marketing of tobacco being attached hereto, marked "Exhibit B" and made a part of this petition.

9.

That, under and by virtue of the provisions of said Act above quoted, the Secretary of Agriculture individually or through his agents and committees has presumably fixed and determined the marketing quota or the amount of tobacco by pounds to be allotted to the farmers who have raised and are to sell tobacco during the year 1938, including plaintiffs, and that by virtue of this procedure there has been allotted or probably will be allotted to each of plaintiffs "a quota" designating the number of pounds that may be sold free from penalty from each farm, including the farm of each of the plaintiffs.

10.

Plaintiffs aver that at the time of preparation of this bill none of them had been notified of the exact quota allotted to each of them or to the farm cultivated by each of them during the year 1938, but plaintiffs allege that each of them have raised and produced an amount of tobacco in excess of the quota if any allotted or to be allotted to each of them. None of plaintiffs know the exact amount of pounds that will be raised by him or her, and therefore none of plaintiffs are in a position to state the amount that he or she will have produced in excess of said quota, and is therefore not in position at this time to state the exact amount of said excess.

11.

That by reason of the fact that each of plaintiffs has produced more tobacco in pounds than has been allotted or will be allotted to him under the procedure above outlined, each petitioner is subject to be penalized under the provisions of said Act as above set forth, and upon the sale of said tobacco on the warehouse floors of each of said defendants, under the provisions of said Act, each of said defendants will be permitted to deduct an amount equivalent to the penalty proscribed in said Act, which is fifty per cent of the sales price on the day of marketing, or 3¢ per pound in case this rate is higher than said fifty per cent. Said penalty if enforced against the farmer is more than sufficiently large to cause the farmer, including each of petitioners, to receive for his "excess" tobacco a price far below the average cost of production, and, therefore, if enforced, will result in coercing tobacco farmers, including petitioners, to reduce their future tobacco acreage to the extent contemplated by said Act.

12.

Plaintiffs are informed, believe and charge that it is the intention of each of said defendants and that each of them has announced it is his intention, that, at the time tobacco is sold in his warehouse, he will deduct an amount equivalent to said penalty in accordance with the provisions of said Act, and that he will in accordance with said provisions, forward the amount of same to the Secretary of Agriculture and that in no event pay said penalty himself or any portion thereof, but that the same will come out of the amount that shall be paid each of plaintiffs for his said tobacco, and that in paying for said tobacco each of said defendants will issue check to the seller only for the amount that will be left after deducting the amount of said penalty plus the usual commissions and costs of sale, and that, therefore, the burden of paying said penalty will thereby be cast upon each of the plaintiffs, and that the defendants will not in any way be affected thereby. Plaintiffs further allege, therefore, that while said Act purports to place a penalty against the warehousemen, in truth and in fact the penalty is placed upon each of the plaintiffs, thereby penalizing each of the plaintiffs for producing on the farms worked by him, an amount of tobacco in excess of what the Secretary of Agriculture authorizes him to produce on said farm free of penalty.

13.

Plaintiffs allege that the cultivation, production and sale of tobacco by each of them constitutes solely the business of farming, and denies that the production or sale of said tobacco directly affects or obstructs the free flow of Interstate or Foreign Commerce, nor does it constitute a burden on said commerce, but that it is solely and wholly a portion of the business of farming.

14.

Plaintiffs further allege that the amount of pounds raised by each of them respectively in excess of said quota will vary from six hundred pounds to twenty-five thousand pounds, and that in their opinion the fair average market value of same will be approximately 15 to 20 cents per pound.

15.

Plaintiffs further show to the court that, unless the said defendants are enjoined from deducting the amount of said penalty from the price paid for the tobacco of each of plaintiffs, said penalty will be deducted from said price resulting in the loss of same to each of said plaintiffs by reason of the fact that none of said defendants are financially able to respond in damages and pay to plaintiffs the amount of said penalties, after they shall have been remitted to the Secretary of Agriculture and that, in the event plaintiffs recover

judgment against said warehousemen or any of them, for said amounts, said judgments will not be collectible and same will be worthless, and that therefore these plaintiffs will have no adequate remedy at law to recover same, and their damages will be irreparable.

16.

Plaintiffs allege that said warehousemen have no legal or constitutional rights to deduct said penalty in the manner hereinbefore outlined or in any other manner, and that they and each of them should be restrained and enjoined by this court from deducting said penalty from the price for which each of plaintiff's tobacco will be sold.

17.

Plaintiffs further allege that said restraining order and injunction should issue because of the fact that said Act hereinbefore referred to, and particularly that portion of same hereinbefore quoted, is violative of and repugnant to the provisions of the constitution of the United States in the following particulars, to-wit:

(a) It is repugnant to and violative of the Tenth Amendment to the Constitution of the United States which reads as follows: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people," in that, that portion of said Act hereinbefore quoted is an attempt by Congress to exercise a nonexistent police power over the property of petitioners; it legislates on a subject and in relation to a power not delegated to the United States but reserved to the States; it constitutes an unpermissible attempt to regulate and control the growth, production and sale of tobacco within a State, the same being transactions intrastate in character; it assesses and attempts to collect a penalty for a purpose and for the exercise of a power not delegated to the United States by the Constitution; under the pretended exercise of such power it attempts an unconstitutional control and regulation of the business of farming; it is not a valid regulation on any subject on which the United States has the power to legislate and particularly is not a valid regulation of Interstate and Foreign Commerce under the provisions of Article 1, Section 8, Clause 3, of the Constitution of the United States, because the guise of such regulation is obviously a pretense and subterfuge, and the manifestly true intent and effect of the provision of said Act above quoted, constitutes an unpermissible regulation and control of the growth, production and sale of tobacco within the States, the same being transactions not interstate in character, but intrastate, and not directly affecting interstate or foreign commerce, and said provisions of said Act constitute not a regulation but in effect a prohibition of Interstate Commerce with respect to the commodity of tobacco.

(b) Because the regulation of the business of farming within the States is beyond the constitutional power of Congress.

(c) Said Act is violative of and repugnant to the provisions of the Fifth Amendment to the Constitution of the United States, providing that no person shall be deprived of life, liberty, or property without due process of law, in that said penalty is assessed and its collection attempted without giving any of plaintiffs an opportunity to be heard in any court of law or equity respecting the legality or constitutionality of same.

(d) Said Act is violative of and repugnant to the provisions of the Seventh Amendment to the Constitution of the United States by reason of the fact that it requires each of plaintiffs to pay a penalty without a hearing, information or trial by a jury.

(e) Said Act is violative of and repugnant to the Fourteenth Amendment of the Constitution of the United States because it does not afford to plaintiff equal protection of the laws with others, who are permitted to sell all tobacco raised by them without a penalty.

(f) Said Act is unconstitutional and illegal because it tends to create a monopoly in the production and sale of tobacco by the citizens of certain States to the detriment of citizens of other States, and prevents the citizens of certain States, particularly Georgia and Florida, from expanding in the production, growth, and sale of tobacco to the benefit of the citizens of other States.

WHEREFORE, waiving discovery plaintiffs pray as follows:

(1) That the plaintiffs be permitted to maintain this suit by joining together as plaintiffs and by joining said warehousemen as defendants.

(2) That said defendants and each of them, be permanently restrained and enjoined from collecting and deducting and from retaining or remitting to the Secretary of Agriculture of the United States the amount of said penalty from the sales price of the tobacco to be sold by each of these plaintiffs.

(3) That pending the final hearing in said cause, each of said defendants be temporarily restrained and enjoined from deducting the amount of said penalty from the price to be paid each of said plaintiffs for his said tobacco, and from remitting same to said Secretary of Agriculture.

(4) That a rule nisi directed to said defendants issue requiring them to be and appear at a place and time named to show cause why the prayers of this petition should not be granted.

(5) That plaintiffs have such other and further relief in the premises as to the court may seem fit and proper.

(6) That process may issue directed to said defendants requiring them to be and appear at the next term of this court to answer this complaint.

A. J. LITTLE,
C. A. AVRIETT,
J. L. BLACKWELL,
Attorneys for Petitioners.

EXHIBIT "A"

Name of plaintiffs

H. Bullard & J. H. Bishop
L. Tyre
gar Bembry
nnewell Kelly
rdon Huggins
C. Stone
R. Kirman
H. Corbett
H. Holton
B. Bryant
be McGhin
jor Lee
L. Bullard
allace Dees
Y. Register
E. Jacobs
. T. Holton
H. Holton
H. Tyre
e Gay & C. A. Avriett
ael Smith & C. A. Avriett
Royals & C. A. Avriett
T. Bridges
B. Riley
. R. Bennett
rt Zipperer
rry Dempsey
arry Johns
M. Jackson
B. Gravely & W. J. S. Hodge
B. Gravely and J. H. Mayo
B. Gravely and F. L. Mayo
. N. Barry
B. Gravely and J. C. Long
m. Hadsock
B. Gravely & Joe Hightower
B. Gravely & E. Hightower
A. Levionen
B. Gravely & L. N. Sirmans
B. Gravely & Sirmans Bros.
B. Gravely & R. L. Fralick
ravely Smith & Bass
O. Hunnicutt
C. Weeks
m Harrell

Name of plaintiffs

M. L. Harrell
George Copeland
F. P. Philpot & Fletcher
L. B. Gravely & Sam Jones
L. B. Gravely & J. L. Cribb
L. B. Gravely & Williams
P. J. Norfleet
T. L. Weeks
Cone Osteen
L. A. Tyre
W. W. Roberson
Frank Wright
W. J. Suggs
F. N. Bullard
H. W. Bethea
E. D. Norfleet
Smith & Carlisle
Willis Holder & Wiggins
Wright Boone & Cravely
Wright & Company & Anderson
Wright & Company & Scarborough
B. H. Alderman
H. G. Carter
O. B. Taylor
Bill Parker
L. A. Young
S. P. Dowdy
G. W. Rogers
Shady Demps
Miss Hazel Rogers
Jim Gadson
J. T. Owens
Eddie Brown
C. C. Owen, Major Hooks & Peach Evans
B. B. Rogers & Walter Mixon
L. C. Coody
O. T. Hawkins
H. J. Williams
Joe Patterson & B. C. Latner
J. L. Witt
L. L. Allen
R. W. Howell
Martin Baker

Name of plaintiffs

H. D. Bullard
R. B. Goode
W. N. Norfleet
V. M. Chastain
L. B. Gravely
Wright & Company & Bullard
L. B. Gravely & Ben Dawson
L. B. Gravely & L. R. Hodge
Ben Moseley
Z. O. Daniels
William McKeithen
H. L. Smith & J. H. Rogers
J. V. Fletcher
Clyde Stewart
B. B. Rogers
William McKinley
Charlie Brown
A. C. Coody
Charlie Brown
Woods Brothers
Joe Robinson
Will Brown
B. B. Rogers & K. E. Thomas
A. M. Rowe
T. R. Keeling
Mrs. H. A. Woods
J. W. Cozart
J. D. Goff
M. L. Stutts
June Baker
Bessie Cowart
J. J. Johnson
Collie Postell
M. B. Bailey
Varence Bailey
M. M. Chesser
A. L. Crosby
Edgar Dutch
L. J. Flannigan
Cline Feagle
F. C. Feagle
Dill Glover
J. W. Goodge
G. W. Jordan
J. T. Kirby
R. C. Kirby

Name of plaintiffs

Willie Kirby
J. F. McCall
Joe Moody
Ida J. Merritt
Jas. H. Mulford
W. J. Pope
L. R. Shealey
J. W. Simmons
C. J. Southwell
A. A. Witt
B. A. Witt
Ellory Witt
Harold Witt
J. S. Witt
S. F. Young
Arthur Postell
J. A. Bailey
L. G. Bailey
P. C. Bullard
J. W. Cullen
John Dampier
G. B. Feagle
H. R. Faulkner
D. F. Feagle
Maxie Feagle
G. G. Graham
Eugene Hall
S. L. Jones
Henry Kirby
S. S. Kirby
J. W. Lewis
Lonnie Mann
F. M. Merritt
I. L. Merritt
Haskell Morris
Joel H. Parrish
Alver Simmons
Carlton Southwell
N. G. Thomas
A. C. Witt
Earnest Witt
Glenn Witt
J. J. Witt
W. T. Witt
J. L. Miller & P. V. Saunders

Name of plaintiffs	*Name of plaintiffs*
Henry Horton & P. V. Saunders	Vester Driver & P. V. Saunders
Fullard Wilder & P. V. Saunders	Jerry Driver & P. V. Saunders
Frank Sullivan & P. V. Saunders	

EXHIBIT "B"

[This exhibit, which merely sets forth Section 312 (a), (b), (c), (d), and (e); Section 313 (a), (b), (c), and (d), and Section 314 of the Agricultural Adjustment Act of 1938, is omitted in the printing hereof by agreement of counsel.]

GEORGIA, LOWNDES COUNTY:

Before the undersigned officer duly authorized by law to administer oaths, personally appeared P. V. Saunders, who deposes and on oath says that he is one of the petitioners named in the attached and foregoing petition, and that the allegations of fact therein set out are true.

P. V. SAUNDERS.

Sworn to and subscribed before me this the 27th day of July 1933.

ELMA LANG,
Notary Public, Lowndes County, Ga.

On the 27th day of July 1938, the following order was entered upon the foregoing bill of complaint:

The foregoing petition read and considered. The same is sanctioned and ordered filed. Let a copy of same, together with a copy of this order be promptly served on each of defendants.

It is ordered that defendants, and each of them show cause before me at the Court House in Valdosta, Lowndes County, Georgia, at ten o'clock A. M., on the 6 day of Aug. 1938, why the prayers of said petition should not be granted and why they should not be restrained and enjoined as therein prayed for, and why the following additional orders of this Court should not remain in force.

In the meantime, and until the further order of this Court, each of the defendants is restrained and enjoined from deducting the penalties referred to in said petition, and remitting same to the Secretary of Agriculture of the United States, or any of his agents, or to any other person except as is hereinafter provided.

For the protection of all parties to this cause, as well as for the protection of the rights, if any, of any other parties who may be interested in the disposition of the funds involved in this litigation; it is further ordered and adjudged as follows:

Until the further order of this Court, each of said defendants is required to keep an accurate account or record of the pounds of tobacco over and above the so called "quota" allotted to each of said

plaintiffs and sold for each of said plaintiffs in each of said warehouses, respectively, together with a record of the price paid therefor. The warehousemen shall deduct from said price the equivalent of the penalty assessed under the provisions of the Act of Congress referred to and quoted in Exhibit B of said petition, and, within a reasonable time, not to exceed ten days from the date of the sale, shall pay the equivalent of said penalty or penalties to the Clerk of this Court, and shall simultaneously deliver to him a duplicate record signed by the warehouseman showing the number of pounds of each such sale, the name of the owner, and price paid for said tobacco and the amount of the penalty deducted in each sale and delivered to the Clerk. The Clerk shall retain one copy of said record and file same as a part of the record in this case. He shall return the other copy to the warehouseman with his receipt written thereon. Each payment and record may include any number of sales that may have been made subject to these provisions.

The funds thus delivered to the Clerk shall be by him deposited in either the Citizens & Southern National Bank or the First National Bank of Valdosta, in Valdosta, Georgia, and shall be deposited to a special account designated as "tobacco account, by T. B. Converse, Clerk," none of which shall be subject to withdrawal except upon the order of this Court, a copy of which shall be by the Clerk delivered to said Bank.

Let defendants, either separately or jointly, file their answers to this petition at least one day prior to the date hereinbefore assigned for a hearing of this cause and deliver a copy of same to counsel for petitioners; and it is so ordered this the 27th day of July 1938.

W. E. THOMAS,
Judge Superior Court, Southern Circuit.

On the 27th day of July 1938, the following order was entered by the Superior Court of Lowndes County, Georgia:

STATE OF GEORGIA, LOWNDES COUNTY

JAMES H. MULFORD, ET AL.,

vs.

NAT SMITH, B. B. SAUNDERS, MURRELL HOLDERBY AND C. R. TOWNSEND, AND LEE MOORE

Suit on complaint

Superior Court of Lowndes County, Ga. November Term 1938

To all and Singular the Sheriff and His Lawful Deputies of Lowndes County, Georgia:

The Defendants are hereby required, in person or by Attorney, to be and appear at the next term of the Superior Court of Lowndes

County, to be held in and for said County on the third Monday in November 1938, then and there to answer Plaintiff's Complaint. In default whereof, the Court will proceed thereon as to justice shall appertain.

Witness the Honorable W. E. Thomas, Judge of said Court, this the 27th day of July 1938.

T. B. CONVERSE,
Clerk.

On the 27th day of July 1938, the following return was made by J. L. Spivey, Sheriff of Lowndes County, Georgia:

GEORGIA, LOWNDES COUNTY:

I have this day personally served a true and correct filed copy of the within petition and order of Court on each of the following defendants named therein: Nat Smith, doing business as Nat Smith Warehouse and also as Nat Smith Brick Warehouse, B. B. Saunders, doing business as B. B. Saunders Warehouse No. 1, and also as B. B. Saunders Warehouse No. 2, Lee Moore, doing business as the Alliance Warehouse, and on Murrell Holderby, one member of the partnership of Murrell Holderby and C. R. Townsend, doing business as Savannah Avenue Warehouse. C. R. Townsend is not at present in Lowndes County. This 27th day of July 1938.

J. L. SPIVEY,
Sheriff Lowndes County, Georgia.

On August 3, 1938, J. A. Ives and numerous others, upon petition filed on their behalf by the same counsel representing plaintiffs, were allowed by order of the Superior Court of Lowndes County, Georgia, to intervene as parties plaintiff, adopting each and every allegation and the prayers of the original petition filed by plaintiffs. Said petition and the order thereon are omitted in the printing hereof by agreement of counsel.

On August 5, 1938, the defendants filed in the Superior Court of Lowndes County, Georgia, their petition for removal of the case to the District Court of the United States for the Middle District of Georgia, Valdosta Division, together with their removal bond in the amount of $500 and written notice to the plaintiffs of the removal, with acknowledgment by counsel for plaintiffs and interveners of service, said petition for removal, bond, notice, and acknowledgment of service being as follows:

In Lowndes County (Georgia) Superior Court

November Term, 1938

JAMES H. MULFORD ET AL., PLAINTIFFS, J. A. IVES ET AL., INTERVENERS,

vs.

NAT SMITH, DOING BUSINESS AS NAT SMITH WAREHOUSE AND ALSO AS NAT SMITH BRICK WAREHOUSE, B. B. SAUNDERS, DOING BUSINESS AS B. B. SAUNDERS WAREHOUSE NO. 1 AND ALSO AS B. B. SAUNDERS WAREHOUSE NO. 2, MURREL HOLDERBY AND C. R. TOWNSEND, DOING BUSINESS AS SAVANNAH AVENUE WAREHOUSE, AND LEE MOORE, DOING BUSINESS AS ALLIANCE WAREHOUSE

Equitable petition for injunction, etc.

To the Superior Court of Lowndes County, Georgia:

The petition of the defendants in the above entitled cause respectfully shows to this court:

1.

That petitioners are defendants in the above entitled cause.

2.

That this suit was duly commenced in this court and is of a civil nature arising under the Constitution and laws of the United States, in that this case involves a Federal question, that is, whether or not the plaintiffs and interveners herein are entitled to enjoin the defendants from complying with the obligations imposed upon them by the provisions of Title III of the Agricultural Adjustment Act of 1938, approved February 16, 1938 (52 Stat. page 31), as amended.

3.

The plaintiffs allege in their bill of complaint filed herein that the said Act is violative of and repugnant to the provisions of the Constitution of the United States, and that the performance on the part of the defendants of the obligations imposed upon them by the said Act will result in irreparable injury to the plaintiffs. There exists, therefore, a controversy between the plaintiffs, including interveners and defendants, the correct decision of which depends upon the construction of the Constitution of the United States and the validity of said Act, enacted by Congress in pursuance thereof, and the title or right set up by the plaintiffs may be defeated by one construction or sustained by an opposite one.

4.

That said Act regulates all marketing of tobacco as in and directly affecting interstate and foreign commerce and imposes a

penalty upon the marketing of tobacco in excess of the marketing quotas fixed in accordance with the provisions of the said Act. Such penalties are payable by the defendants to the Secretary of Agriculture, who is required to cover them into the general funds of the Treasury of the United States, and said Act gives to the defendants the right to deduct an amount equivalent to the penalties so paid from their payments to plaintiffs, including interveners, for tobacco belonging to the plaintiffs, including interveners, marketed to or through the defendants. This suit and these proceedings, therefore, arise under a law of the United States regulating interstate and foreign commerce and the respective rights of plaintiffs, including interveners, and defendants depend upon the validity of said law.

5. That the time in which defendants herein are required by the laws of the State of Georgia, and the rules and practices in said State Court to answer or plead in said suit, has not yet expired.

6. That said defendants make and file herewith a bond in the sum of Five Hundred Dollars ($500.00), with good and sufficient security for its entering the District Court of the United States for the Middle District of Georgia, Valdosta Division, within thirty days of the filing of this petition, a certified copy of the record of this suit and for paying all costs that may be awarded by said District Court, if it should hold that said suit was wrongfully or improperly removed from said State Court.

Wherefore, said defendants pray that this court proceed no further herein, except to accept this petition and said bond.

(S) FRANKLIN & EBERHARDT,
Attorneys for the Defendants.

GEORGIA, LOWNDES COUNTY.

Before the undersigned, an officer duly authorized by law to administer oaths, personally appeared B. B. Saunders, who, being duly sworn, deposes and says that he is one of the defendants named in the foregoing petition, and that the facts alleged therein are true so far as they come within his own knowledge, and he believes them to be true so far as they are derived from the knowledge of others.

(S) B. B. SAUNDERS.

Sworn to and subscribed before me this August 5, 1938.

(S) H. B. GLISSON,
Notary Public, State Ga. at Large.

[Caption omitted in printing.]

Know all men by these presents, that we, Nat Smith, B. B. Saunders, Murrel Holderby and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore, as defendants, principals, and Jas. Y. Blitch and Wm. L. Goodloe, as securities, of Lowndes County, Georgia, are held and firmly bound unto James H. Mullard et al., who appear as parties plaintiff in the above case, on the original petition therein, and also unto said interveners, in the penal

sum of Five Hundred Dollars ($500.00) for the payment of which well and truly to be made unto the said James H. Mulford and said other plaintiffs in said cause, including said interveners, their heirs, executors, administrators and assigns, we bind ourselves, our successors and assigns, jointly and severally by these presents;

Upon condition, nevertheless, that, whereas, the said Nat Smith, B. B. Saunders, Murrel Holderby and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore have filed their petition in the Superior Court of Lowndes County, Georgia, for the removal of a certain cause herewith pending, wherein the said James H. Mulford and others named as plaintiffs and interveners in said cause are plaintiffs and interveners, respectively, and the said Nat Smith, B. B. Saunders, Murrel Holderby and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore are defendants, to the District Court of the United States for the Middle District of Georgia, Valdosta Division.

Now, if the said Nat Smith, B. B. Saunders, Murrel Holderby, and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore shall enter in said District Court of the United States within thirty days from the date of filing said petition for removal, a certified copy of the record in said case, and shall well and truly pay all costs that may be awarded by said District Court of the United States, if the said Court shall hold that the suit was wrongfully or improperly removed thereto, then will this obligation be void; otherwise it shall remain in full force and virtue.

In witness whereof the said Nat Smith, B. B. Saunders, Murrel Holderby, and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore, as principals, and the said Jas. Y. Blitch, and Wm. L. Goodloe, as securities, have set their hands and affixed their seals on this the 5th day of August 1938.

[SEAL] (S) NAT SMITH,
By (S) O. W. FRANKLIN,
His Attorney at Law.

[SEAL] (S) MURREL HOLDERBY,
Principal.

[SEAL] (S) C. R. TOWNSEND,
Principal
Doing Business as Savannah Avenue Warehouse.
By (S) O. W. FRANKLIN,
Their Attorney at Law.

[SEAL] (S) LEE MOORE,
Principal.
By (S) O. W. FRANKLIN,
His Attorney at Law.

[SEAL] (S) B. B. SAUNDERS,
Principal.

Witnesses as to the execution of principals:
(S) GEO C. MCCRARY, Jr.
(S) H. B. GLISSON.

[SEAL] (S) JAS. Y. BLITCH,
Security.

[SEAL] (S) WM. L. GOODLOE,
Security.

Witnesses as to the execution of security:
(S) GEO. C. MCCRARY, Jr.
(S) O. W. FRANKLIN, Jr.

[Caption omitted in printing.]

To JAMES H. MULFORD AND OTHERS NAMED AS PLAINTIFFS, AND J. A. IVES, ET AL., INTERVENERS, IN THE PETITION OF FILE IN THE ABOVE CAUSE, AND THEIR ATTORNEYS OF RECORD, A. J. LITTLE, J. L. BLACKWELL, AND C. A. AVRIETT:

Please take notice that the defendants will, on the 5th day of August, 1938 at 3:30 o'clock P. M. at the Courthouse of Lowndes County, Georgia, Valdosta, Georgia, file in the above named court their petition and bond, as required by law, for the removal of said cause from the above entitled court to the District Court of the United States for the Middle District of Georgia, Valdosta Division, and also a bond in the sum of Five Hundred Dollars ($500.00), given on such removal according to law and the requirements of the statute in such cases made and provided, and copies of such bond and petition are herewith served.

(S) FRANKLIN & EBERHARDT,
Attorneys for Defendants.

Due and legal service of the above and foregoing notice is hereby acknowledged. All other and further service or notice is hereby waived.

This the 5th day of August, 1938, at 12:20 o'clock P. M.

(S) A. J. LITTLE,
(S) C. A. AVRIETT,
(S) J. L. BLACKWELL,
Attorneys for the Plaintiffs and Interveners in the above entitled cause.
(S) LANGDALE, SMITH & TILLMAN,
Associate Attorneys for Interveners.

On August 5, 1938, at 8 o'clock P. M., there was filed in the District Court of the United States for the Middle District of Georgia, Valdosta Division, a transcript of the record on removal.

On August 18, 1938, the United States of America filed its petition for leave to intervene as a party defendant, the same being as follows:

In the District Court of the United States, Middle District of Georgia, Valdosta Division

In Equity No. 97

JAMES H. MULFORD, ET AL., PLAINTIFFS

v.

NAT SMITH, DOING BUSINESS AS NAT SMITH WAREHOUSE AND ALSO AS NAT SMITH BRICK WAREHOUSE; B. B. SAUNDERS, DOING BUSINESS AS B. B. SAUNDERS WAREHOUSE NO. 1 AND ALSO AS B. B. SAUNDERS WAREHOUSE NO. 2; MURRELL HOLDERBY AND C. R. TOWNSEND, DOING BUSINESS AS SAVANNAH AVENUE WAREHOUSE; AND LEE MOORE, DOING BUSINESS AS ALLIANCE WAREHOUSE, DEFENDANTS

Petition of United States of America for leave to intervene as a party defendant

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition of the United States of America by its attorneys, acting under the direction of the Attorney General of the United States, respectfully shows:

I.

The object of this petition is to effect the intervention in the above entitled case of the United States of America as a party defendant for the purpose of presenting evidence and argument upon the question of the constitutionality of certain provisions of the Agricultural Adjustment Act of 1938, approved February 16, 1938 (52 Stat. 31), as amended.

II.

The bill of complaint herein is filed by numerous persons, who describe themselves in the bill as producers of flue-cured tobacco, against several persons described in the said bill as warehousemen of such tobacco. The object of the bill of complaint is temporarily and permanently to enjoin the warehousemen from deducting from the purchase price of tobacco to be paid by them to such producers the penalty prescribed by Section 314 of the Act, applicable to the marketing of tobacco in excess of marketing quotas established for the farms of the producers under Title III, subtitle B, part I of the Act and related provisions, and from remitting, as provided by Section 372 of the Act, the said penalties to the Secretary of Agriculture.

III.

The producers allege, as grounds for the relief sought by them in said bill, that the applicable provisions of the Act are violative of, and repugnant to, the Constitution of the United States. It is particularly alleged that such provisions of the Act constitute an invalid exercise of the commerce power of Congress under Article I, Section 8, Clause three, and invade the powers reserved to the states under the Tenth Amendment, and that by such provisions the producers are deprived of their liberty and property without due process of law in violation of the Fifth Amendment, of equal protection of the laws in violation of the Fourteenth Amendment, and of their right to a jury trial in violation of the Seventh Amendment. It is alleged also that the applicable provisions of the Act are unconstitutional and illegal as tending to the creation of a monopoly in the production and sale of tobacco by the citizens of certain states to the detriment of citizens of other states.

IV.

The proceedings in this case were removed by the defendants herein to this court from the Superior Court of Lowndes County, State of Georgia. Prior to removal an order was issued by the Judge in said state court temporarily restraining and enjoining the defendants from deducting the equivalent of said penalties and from remitting the same to the Secretary of Agriculture, or any of his agents, or to any other person, except as provided in said order. It is also provided in said order that, until the further order of the court, each of the warehousemen named as defendants herein shall deduct from the purchase price to be paid by them to the producers for tobacco the equivalent of the penalty prescribed by the Act and pay the same to the Clerk of said state court, to be held by said Clerk as provided in said order.

V.

The Clerk of this court, under date of August 9, 1938, acting pursuant to Section 1 of the Act of August 24, 1937, c. 754, 50 Stat. 751, 28 U. S. C. A. 401, certified to the Attorney General of the United States that the constitutionality of the Agricultural Adjustment Act of 1938, an Act affecting the public interest, was drawn in question in this court in these proceedings.

Wherefore it is prayed that an order may be passed permitting the United States of America to intervene and become a party defendant in this case for the purposes, and subject to the provisions, of Section 1 of the Act of August 24, 1937, mentioned above.

T. Hoyt Davis,
United States Attorney.
John S. L. Yost,
Special Assistant to the Attorney General.

On August 18, 1938, the District Court entered its order permitting the United States of America to intervene as a party defendant, the said order being as follows:

In the District Court of the United States, Middle District of Georgia, Valdosta Division

In Equity No. 97

JAMES H. MULFORD, ET AL., PLAINTIFFS

v.

NAT SMITH, DOING BUSINESS AS NAT SMITH WAREHOUSE AND ALSO AS NAT SMITH BRICK WAREHOUSE; B. B. SAUNDERS, DOING BUSINESS AS B. B. SAUNDERS WAREHOUSE NO. 1 AND ALSO AS B. B. SAUNDERS WAREHOUSE NO. 2; MURRELL HOLDERBY AND C. R. TOWNSEND, DOING BUSINESS AS SAVANNAH AVENUE WAREHOUSE; AND LEE MOORE, DOING BUSINESS AS ALLIANCE WAREHOUSE, DEFENDANTS

Order of court permitting intervention of the United States of America as a party defendant

It appearing to the satisfaction of the court from the petition for leave to intervene this day filed by and on behalf of the United States of America that good and sufficient cause exists therefor:

It is hereby ordered that the petition of the United States of America for leave to intervene and be made a party defendant in the above entitled cause be, and the same is hereby, approved and ordered filed, and leave so to intervene is hereby granted for the purposes, and subject to the provisions, of Section 1 of the Act of August 24 1937, c. 754, 50 Stat. 751, 28 U. S. C. A. 401.

(S) BASCOM S. DEAVER,
District Judge.

On August 26, 1938, the request of the Honorable Bascom S. Deaver, Judge of the United States District Court for the Middle District of Georgia, to the Honorable Rufus E. Foster, United States Senior Circuit Judge of the Fifth Circuit, for the designation of two other judges to participate in the hearing and determination of the case, together with the order of Honorable Rufus E. Foster designating the Honorable Samuel H. Sibley, United States Circuit Judge, and the Honorable Charles B. Kennamer, United States District Judge, were filed, said request and order thereon being as follows:

[Caption omitted in printing.]

To the Honorable RUFUS E. FOSTER, *United States Senior Circuit Judge, Fifth Circuit.*

The above styled case was filed in a Superior Court of the State of Georgia and removed to the United States District Court, Middle District of Georgia, Valdosta Division. A restraining order was granted by the Superior Court before removal.

The bill makes an attack upon the constitutionality of the Agricultural Adjustment Act of 1938 relating to penalties on tobacco sales in excess of the marketing quota. The Attorney General of the United States was notified and the United States of America has intervened in the case under Section 401, Title 28 U. S. C. A.

As required by Section 380a, Title 28 U. S. C. A., I respectfully request that you designate two other judges to participate in the hearing and determination of said case.

BASCOM S. DEAVER,
United States District Judge,
Middle District of Georgia.

Order

In compliance with the request of the Honorable Bascom S. Deaver, the Honorable Samuel H. Sibley, U. S. Circuit Judge, and the Honorable Charles B. Kennamer, U. S. District Judge, are hereby designated to sit with him in the trial and consideration of the above numbered and entitled case.

RUFUS E. FOSTER,
Senior U. S. Circuit Judge.

On August 26, 1938, plaintiffs filed their petition praying that the restraining order entered July 27, 1938, by the Superior Court of Lowndes County, Georgia, be continued in force and effect, with modifications, said petition being as follows:

[Caption omitted in printing.]

To Honorable BASCOM S. DEAVER, JUDGE OF SAID COURT:

The petition of James H. Mulford et al., plaintiffs in said cause, and J. A. Ives et al., interveners therein, respectfully shows to the Court:

1.

That subsequent to the signing of the order by the Judge of the Superior Court of Lowndes County, Georgia, restraining the defendants from remitting the equivalent of penalties on the sale of "excess" tobacco, as described in the original petition, and prior to the date assigned for a hearing in the Superior Court of Lowndes County, Georgia, said cause was, on petition of defendants, removed to this court and that since said time there has been no change in the provisions of said order dated July 27th, 1938.

2.

That subsequent to the signing of said order, the representatives of the Secretary of Agriculture instituted a readjustment of a large number of said quotas and have already readjusted a large number of same, and are still readjusting some of said quotas in Lowndes County and adjoining counties, and have authorized and directed the defendants to withhold their report on same until several days subsequent to the closing of said market.

3.

That, because of said readjustments and instructions, the defendant warehousemen have as yet scarcely completed their calculations of the amounts of said penalties, and therefore have been unable to pay the equivalent of same either to the Secretary of Agriculture, as provided in the said Act of Congress, or to the Clerk of the Superior Court of Lowndes County, Georgia, as provided in said order of Court.

4.

That upon granting said temporary restraining order, the Judge of the Superior Court of Lowndes County, Georgia, did not require bond and security to be given by plaintiffs and that under the law of the State of Georgia it was within the discretion of said court to require such bond and security.

5.

Practically all of plaintiffs and interveners are small farmers and individually unable to give such bond and security separately, and that it is a very difficult matter for counsel for petitioners to see a large number of them and arrange for said bond and security as they are scattered over five or six different counties over South Georgia and North Florida.

6.

That, if said restraining order should be dissolved at this time, because of the fact that no bond or security by plaintiffs has been given or required as aforesaid, the payment of the equivalent of the penalties involved in this suit would, if said restraining order be dissolved, doubtless be demanded by the Secretary of Agriculture, and, if such demand should be complied with, the defendants would be individually liable to plaintiffs in the respective amounts thereof should the Act of Congress be finally declared to be unconstitutional, thereby resulting in a multitude of suits instituted and prosecuted at great expense by plaintiffs and resulting also in great loss to defendants which they claim that they as innocent parties in the matter should not suffer.

7.

That since the institution of this suit defendants in said cause have stated that, because of the threat of many separate suits against them in the event said Act should be declared unconstitutional, it is the intention of each of said defendants unless ordered to do so by a court of competent jurisdiction, to refuse to pay the equivalent of said penalties to either the Secretary of Agriculture or to said petitioners, and that it is their intention to retain posses-

sion of same until the constitutionality of said Act of Congress is finally determined.

8.

Plaintiffs further show that the equivalent of said penalties should not be permitted to remain in the possession and control of said defendants as it is clear that either the plaintiffs or the Government are entitled to same and that therefore the rights of the plaintiffs and of the Government in said matter will be best protected by requiring that the equivalent of said penalties be impounded in the registry of this court and there kept subject to the order of this Court pending the final determination of this cause.

9.

That, Attorneys for plaintiffs, defendants, and the United States of America have agreed that the above stated facts are true and that, therefore, the provisions of the said restraining order passed by the Judge of the Superior Court of Lowndes County, Georgia, on July 27th, 1938, temporarily restraining defendants from remitting to the Secretary of Agriculture or his agents the equivalent of said penalties remain in force pending the further order of this court, and that the equivalent of said penalties be impounded into the registry of this court for the protection of all parties concerned, as only by the impounding of same can the plaintiffs or the Government be protected against the danger of irreparable loss.

10.

Petitioners further show that the defendants, including the United States of America as interveners, have by their counsel agreed that the said restraining order be continued in force and effect, and have agreed that the deposit of the equivalent of said penalties into the registry of this court, under such terms and conditions as the court may provide, and the said funds so deposited shall serve as security for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby, in full compliance with the provisions of Title 28, U. S. C., Section 382.

Wherefore plaintiffs pray that the court pass an order in said cause providing in substance as follows:

(1) That the temporary restraining order above referred to be continued in force and effect pending the further order of this court.

(2) That defendants be required to pay the equivalent of said penalties into the registry of this court under such terms and conditions as the court may deem proper for the protection of all parties interested therein.

(3) That under the peculiar facts and circumstances above outlined and by agreement of all parties, the deposit of said money

into the registry of the court and the funds so deposited be accepted as full compliance with the provisions of Title 28, U. S. C., Section 382.

(S) A. J. LITTLE,
(S) C. A. AVRIETT,
(S) J. L. BLACKWELL,
Attorneys for Plaintiffs.

A. J. LITTLE,
Post Office Address, Valdosta, Ga.
C. A. AVRIETT,
Post Office Address, Jasper, Fla.
J. L. BLACKWELL,
Post Office Address, Live Oak, Fla.

We agree that the statements of fact outlined in the above petition are true, and agree to the issuance of an order prayed by plaintiffs therein.

This 26th day of August, 1938.

(S) FRANKLIN & EBERHARDT,
Attorney for Warehousemen.
(S) T. HOYT DAVIS,
(S) JOHN S. L. YOST,
Attorneys for the United States of America.

On August 26, 1938, the Court entered its order continuing the restraining order issued by the Superior Court of Lowndes County, Georgia, on July 27, 1938, in effect, as modified, said order being as follows:

[Caption omitted in printing.]

Order

The foregoing petition of Plaintiffs and Intervening Plaintiffs in the above entitled cause, consented to by all parties as therein shown, having been read and considered by the court, and counsel for all parties having been heard, and it appearing to the court:

1.

That subsequent to the signing of the order by the Judge of the Superior Court of Lowndes County, Georgia, restraining the defendants from remitting the equivalent of penalties on the sale of "excess" tobacco as described in the original petition, and prior to the date assigned for a hearing in the Superior Court of Lowndes County, Georgia, said cause was, on petition of defendants, removed to this court and that since said time there has been no change in the provisions of said order dated July 27th, 1938.

2.

That none of the penalties referred to in said petition have as yet been paid into the registry of the Superior Court of Lowndes County, Georgia, as provided for in the order of the Judge of said Court.

3.

That practically all of plaintiffs and interveners are small farmers and individually unable to give such bond and security separately, and that it is a very difficult matter for counsel for petitioners to see a large number of them and arrange for said bond and security as they are scattered over five or six different counties over South Georgia and North Florida.

4.

That, if said restraining order should be dissolved at this time, because of the fact that no bond or security by plaintiffs has been given or required as aforesaid, the payment of the equivalent of the penalties involved in this suit would, if said restraining order be dissolved, doubtless be demanded by the Secretary of Agriculture, and, if such demand should be complied with, the defendants would be individually liable to plaintiffs in the respective amounts thereof should the Act of Congress be finally declared to be unconstitutional, thereby resulting in a multitude of suits instituted and prosecuted at great expense by plaintiffs and resulting also in great loss to defendants which they claim that they as innocent parties in the matter should not suffer.

5.

That since the institution of this suit defendants in said cause have stated that, because of the threat of many separate suits against them in the event said Act should be declared unconstitutional, it is the intention of each of said defendants unless ordered to do so by a court of competent jurisdiction, to refuse to pay the equivalent of said penalties to either the Secretary of Agriculture or to said petitioners, and that it is their intention to retain possession of same until the constitutionality of said Act of Congress is finally determined.

6.

That the equivalent of said penalties should not be permitted to remain in the possession and control of said defendants as it is clear that either the plaintiffs or the Government are entitled to same, and that therefore the rights of the plaintiffs and of the Government in said matter will be best protected by requiring that the equivalent of said penalties be impounded in the registry of this court and there kept subject to the order of this court pending the final determination of this cause.

7.

That the equivalent of said penalties should be impounded into the registry of this court for the protection of all parties concerned, and that only by the impounding of same can the plaintiffs and the Gov-

ernment be protected against the danger of irreparable and imminent loss.

It is, thereupon, ordered and adjudged as follows:

(1) That the temporary restraining order issued by the Superior Court of Lowndes county, Georgia, on the 27th day of July, 1938, as hereinafter modified, be and it is hereby continued in force and effect pending the further order of this court.

(2) That instead of paying the equivalent of the penalties referred to therein to the Clerk of the Superior Court of Lowndes County, Georgia, as required by the provisions of said order of the said Superior Court of Lowndes County, the defendants are required to pay the equivalent of said penalties to George F. White, Clerk, Macon, Georgia, for deposit in the registry of this court.

(3) That said payments of said warehousemen shall be each accompanied by a written report to be filed simultaneously with such payments with said Clerk showing the name and address of each grower and the amount of the penalty assessed against the "excess" tobacco sold by him in each of said defendants' warehouses, respectively; and that each of said payments and reports shall be made not later than noon, September 2, 1938.

(4) That the funds deposited as aforesaid, with Clerk of this Court, be and the same shall constitute security for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby, in compliance with the provisions of Title 28, U. S. C., Section 382.

Done at Macon, Georgia, this 26th day of August 1938.

(S.) BASCOM S. DEAVER,
United States Judge.

On August 29, 1938, the plaintiffs and intervening plaintiffs, with leave of Court, filed their amendment to the bill of complaint, said amendment being as follows:

[Caption omitted in printing.]

Amendment to bill of complaint

Now come plaintiffs and intervening plaintiffs in the above entitled cause, and leave of Court being first had and obtained amend their Bill of Complaint heretofore filed as follows:

1.

Sub-paragraph (e) of Paragraph Seventeen of said Bill of Complaint is stricken.

Plaintiffs and intervening plaintiffs further amend said bill by adding thereto additional paragraphs, as follows:

2.

itioners further allege that the production and sale of tobacco bacco growers of this country have not burdened or obstructed erce or the free flow of commerce, and that there is no reason clude that it will so do; that the facilities of the railroads and common carriers of the country and particularly those carriers ting in the tobacco-growing sections of the Southeast, where ilk of flue-cured tobacco is produced, have for many years past, at the time of the passage and approval of said Act, and now ore than ample to move said tobacco freely and without undue . Petitioners further show that neither in the farming industry e sections named, nor in the operation of tobacco warehouses there been any labor disputes or any danger or hint of labor dis- to threaten the free flow of tobacco in Interstate or Foreign erce. That there has been no disorderly marketing of tobacco. production and sale of tobacco by the growers, therefore, have irectly affected Interstate or Foreign Commerce and there ex- o condition indicating that it will directly affect same to the that its regulation by Congress is within the powers delegated ngress by the Constitution of the United States.

3.

itioners further show that Section 313 (b) which is as follows: Secretary shall provide, through the local committees, for the ent of the marketing quota for any State among the farms on tobacco is produced, on the basis of the following: Past mar- of tobacco, making due allowance for drought, flood, hail, abnormal weather conditions, plant bed, and other diseases; labor, and equipment available for the production of tobacco; otation practices; and the soil and other physical factors af- g the production of tobacco; Provided, That, except for farms ich for the first time in five years tobacco is produced to be ted in the marketing year for which the quota is effective, the ting quota for any farm shall not be less than the smaller of (1) three thousand two hundred pounds, in the case of flue- tobacco, and two thousand four hundred pounds, in the case er kinds of tobacco, or (2) the average tobacco production for rm during the preceding three years, plus the average normal ction of any tobacco acreage diverted under agricultural ad- ent and conservation programs during such preceding three " provides no basis or standard which is reasonable or ca- of being understood, by which the Secretary or his local com- s may be intelligently guided in allotting said quotas, and hes to the grower no information or standard by which he letermine with the slightest degree of accuracy the number of

pounds of tobacco that he may raise on any farm free of penalty, for that neither in said paragraph nor elsewhere in said Act is there any definition or indication of the meaning of the words "past marketing," nor is there therein any definition or indication showing that said words cover the marketing of tobacco in any one or more named years; nor does said paragraph or Act define the meaning of the words "due allowance" which is directed to be made for the happening of any of the other contingencies or the existence of the other factors mentioned in said Section, nor does said Act indicate what "other physical factors affecting the production of tobacco" are to be taken into consideration, nor is there stated therein the relative effect of said factors or the happening of any of said contingencies. Because of the absence of such definite and intelligible standards by which said quotas are directed to be allotted, and because of the omission from said Act of any definite channelizing of the administrative duties of the Secretary of Agriculture acting through his local committees in allotting said quotas, the determination of the basis for the allotment of same is left almost wholly to the insufficiently guided and arbitrary interpretation of the meaning of said Section by the Secretary acting through his committees, and the final determination of said quotas by the Secretary is therefore left almost entirely to his discretion or to the judgment or whims of said committees acting for the said Secretary; and, therefore, by the terms of said Section, Congress has delegated to the Secretary of Agriculture, acting through his committees, legislative powers to fix the standards by which quotas are allotted and judicial powers to arbitrarily determine the allotment of said quotas, involving the power to pass on substantial property rights of petitioner, who are furnished no definite guide by which they may exercise their rights in the premises or upon which they may base an appeal to a reviewing committee or court. Petitioners further allege that upon appeal to a reviewing committee or court said committee or court will be confronted with the same insuperable difficulties in passing upon said appeal as are hereinbefore outlined. The duties therein delegated to said Secretary are consequently not merely administrative, but also legislative and judicial. Petitioners, therefore, allege that said Section of said Act outlining the basis and method of the allotment of said quotas, and the consequent assessment of the penalty on the sale of said "excess" tobacco is violative of the provisions of the Constitution of the United States in the following additional particulars:

(a) They are violative of Article 1 Section 1 of the Constitution of the United States which vests all legislative powers therein granted in a Congress of the United States, in that, legislative powers to arbitrarily interpret, expand, and apply said indefinite, vague and unintelligible provisions of said Section are delegated to the Secretary of Agriculture acting through his local committees in the manner outlined in the preceding portion of this paragraph.

(b) They are violative of Article 3 Section 1 of the Constitution the United States which provides that the judicial powers of the ited States shall be vested in one Supreme Court and in such erior Courts as the Congress may from time to time ordain and ablish, in that judicial powers to pass upon and determine issues volving substantial property rights of citizens are vested in the cretary of Agriculture, acting through committees, as hereinbefore lined in the preceding portion of this paragraph.

(c) They are violative of the provisions of the fifth amendment the Constitution of the United States which provides that no rson shall be deprived of life, liberty, or property without due ocess of law, in that, by the said provisions of said Act excessive alties are imposed upon citizens of the United States, including itioners because of the fact, that, as a result of engaging in a rful occupation, they may produce and offer for sale more tobacco n the said Secretary may authorize them to produce free of pen-y, without petitioners having been furnished by the provisions said Act with any definite or certain basis or standard by which y could intelligently conduct the planting or cultivation of their acco crops within limits that might subsequently be fixed by said cretary as necessary to avoid the assessment of said penalties, and the further reason that, under the terms of said Act said sub-ntial and excessive penalties are assessed without petitioners hav-been afforded any opportunity to be heard in any court of law or ity respecting the legality or constitutionality of same.

4.

'etitioners allege that they are citizens and residents respectively Lowndes County, Georgia, or of adjoining counties of South rgia and North Florida, all in the vicinity of Valdosta, Georgia, location of the warehouses operated by defendants, and that each them respectively has produced tobacco on farms located in the nty of his residence or in an adjoining county and that they haul ir tobacco to said warehouses for the purpose of sale, either on cks, wagons, or other similar private conveyances.

5.

he petitioners allege that for the farm of each of the petitioners arketing quota for flue-cured tobacco was established, in accord-e with the applicable provisions of the Agricultural Adjustment of 1938, approved February 16, 1938, as amended; that such ta was intended to be made effective for the marketing year be-ning July 1, 1938, and ending June 30, 1939; that each of the tas thus established was for an amount less than the amount of tobacco produced on the farm in 1938; that the marketing sea-for such tobacco in Georgia and Florida begins on or about the day of August and ends on or about the first day of September;

that each of the petitioners, while not complaining herein of the amount, as such, of the quota for the marketing of his tobacco as established for his farm, does complain of the establishment of such a quota at a time subsequent to the completion by him, at great expense, of all arrangements for the seeding, planting, and cultivation of his flue-cured tobacco crop.

Petitioners further allege that, in accordance with the custom of tobacco growers in South Georgia and North Florida they began to arrange for the planting of their 1938 tobacco crop in December 1937, at or about which time it was necessary, in following the best methods of producing tobacco, for them to prepare with great care, trouble, and expense, their tobacco beds in which the seeds are planted. That it was necessary to cultivate said beds carefully, sow the seed therein, water same whenever needed, cover same with cloth in order that the plants may be protected from the cold, and otherwise to take care of the plants therein until they could reach the size requisite for replanting, and that, upon reaching said size, it was necessary that they be replanted in the fields prepared and fertilized for that purpose. That it was necessary to fertilize said fields with a large amount of expensive fertilizer, cultivate them carefully, spray the plants diligently to insure any reasonable degree of success in producing a fair crop of tobacco on same. That it was necessary to begin to gather said crop of tobacco during the month of June 1938, and to continue during said month of July to gather, cure, and grade same, all of which requires much labor, care, and expense, and that the greater bulk of said crop in South Georgia and North Florida is usually gathered and ready for market by the first of August each year, and this condition was true during the year 1938.

Petitioners allege that at the time of the approval by the President of the Agricultural Adjustment Act of 1938, they and each of them had planted out their beds and were either about ready to reset said plants or had already reset a large portion of same in their respective fields, and that at the time of the proclamation of the Secretary of Agriculture during February 1938, of the amount of the National marketing quota for flue-cured tobacco, almost all of their said tobacco fields had been planted, and that, during said periods above referred to, petitioners had no knowledge or any way of learning even the probable amount of the quota that under the terms of said Act might be allotted to each of said farms respectively. Petitioners further allege that, at the time of the announcement of the State quotas, during July, 1938, and of the announcement of the individual quotas for their respective farms, immediately prior to the opening of the auction markets, each had largely, if not wholly, completed planting, cultivating, gathering, curing and grading his said crop, and that until the announcement of said individual quotas petitioners did not know and had no way of knowing the probable amount of same, except that, at the time of the preparation of the original bill of complaint in this cause,

petitioners had reached the conclusion, based on available information indicating a large yield in Georgia and Florida, that each of them would probably produce tobacco in excess of the allotted quota. Petitioners, therefore, allege that, under the provisions of said Act, penalties have been or will be assessed against each of them for the commission of lawful acts, when petitioners had no means of estimating the quota that might be allotted to each, or of knowing in advance of the tobacco producing season, how much if any tobacco in excess of said quota each might produce, and that, even if said Act could be otherwise considered as constitutional it was, for the reasons stated above, passed and approved on a date too late to be constitutionally applied to the 1938 tobacco crops of petitioners.

Petitioners admit that in fixing their respective quotas for the 1938 season, the Secretary of Agriculture adhered to and complied with the provisions of the said Act, herein contended to be invalid and uncertain in its terms, but they allege that the said provisions of said Act, in so far as they apply to the tobacco crop of petitioners for the year 1938, are, in addition to the constitutional objections herein before raised to same, violative of the provisions of the Constitution of the United States, in that petitioners, in the manner and under the conditions above outlined, will be deprived of their property without due process of law, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

Wherefore, waiving discovery, plaintiffs add to their petition the following prayers:

(a) That the provisions of said Act quoted in "Exhibit B" to said original complaint be declared unconstitutional, null and void.

(b) That the provisions of said Act included in said Exhibit, in so far as they apply to the marketing of petitioners' tobacco during the year 1938, be declared unconstitutional, null and void, and that the penalties imposed as a result thereof be declared null and void.

(c) That this amendment be allowed and ordered filed as part of the record in said cause.

(S) A. J. LITTLE,
(S) C. A. AVRIETT,
(S) J. L. BLACKWELL,

A. J. LITTLE,
Post Office Address, Valdosta, Ga.
C. A. AVRIETT,
Post Office Address, Jasper, Florida.
J. L. BLACKWELL,
Post Office Address, Live Oak, Florida.

On September 2, 1938, the answer of the United States of America, intervening defendant, to the bill of complaint and the amendment thereto was filed, said answer being as follows:

[Caption omitted in printing.]

TO THE HONORABLE SAMUEL H. SIBLEY, CHARLES B. KENNAMER, BASIL S. DEAVER:

The answer of the United States of America, intervening defendant, to the bill of complaint and the amendment thereto, heretofore filed in this case, respectfully shows:

I.

The said defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, and 7 of the bill of complaint.

II.

The said defendant admits the allegations contained in paragraph 8 of the bill of complaint except the allegation that the Agricultural Adjustment Act of 1938 contains provisions regulating the production of tobacco, which allegation is denied.

III.

Answering paragraphs 9 and 10 of the bill of complaint, the said defendant admits that the facts alleged therein are true in substance.

IV.

Answering paragraph 11 of the bill of complaint, the said defendant denies that all, but admits that some, of the plaintiffs have produced tobacco in excess of their respective farm quotas established under the provisions of the said Act. The defendant admits that any warehouseman through whom any of the plaintiffs may market tobacco in excess of any quota established for the farm of such plaintiff is subject to the penalty mentioned in said paragraph of the bill, and that such warehouseman has the right to deduct an amount equivalent to the penalty in paying the purchase price of tobacco to such grower. The defendant denies, however, that such deduction by the warehouseman will cause any of such plaintiffs to receive for his tobacco a price far below the average cost of production. The defendant also denies that the penalty provisions of the Act will result in coercing tobacco farmers, including any of the plaintiffs herein, to reduce their future tobacco acreage.

V.

Answering paragraph 12 of the bill of complaint, the said defendant admits that, according to the information received by the said defendant, the warehousemen who are defendants herein intend, in paying the purchase price to such of the plaintiffs as market tobacco through such warehousemen in excess of the quota estab-

lished under the Act, to deduct an amount equivalent to the penalty prescribed by the Act. The defendant denies that the penalty prescribed by the Act is imposed upon the plaintiffs, or any one of them, for producing on their farms tobacco in any amount and, further, denies that the Secretary of Agriculture has any power under said Act, or has attempted to exercise any power by virtue of said Act, to limit or authorize the production of tobacco on the farms of such plaintiffs.

VI.

The said defendant denies the allegations contained in paragraph 13 of the bill of complaint.

VII.

The said defendant is without knowledge as to the matters contained in paragraphs 14 and 15 of the bill of complaint.

VIII.

The said defendant, although not required to answer the conclusions of law set forth in paragraphs 16 and 17 of the bill of complaint, denies that the applicable provisions of the Act are intended to regulate the production of tobacco or the business of farming, and avers that such provisions regulate the marketing only of abnormally excessive supplies of tobacco, as in and directly affecting interstate and foreign commerce, and are entirely consistent with the Constitution of the United States.

IX.

Answering the additional paragraph to the bill of complaint mentioned in paragraph 2 of the amendment to the bill of complaint, the said defendant denies the allegations therein contained except the allegation that the facilities of the railroads and other common carriers of the country, and particularly those carriers operating in the tobacco growing sections of the Southeast, where the bulk of flue-cured tobacco is produced, have been for many years past, were at the time of the passage and approval of said Act, and now are more than ample to move said tobacco freely and without any undue delay, and also the allegation that neither in the farming industry of the sections named nor in the operation of tobacco warehouses have there been any labor disputes, or any danger or any hint of labor disputes, threatening the free flow of tobacco in interstate and foreign commerce, which said allegations the said defendant admits, but in connection therewith avers that during the marketing season for flue-cured tobacco in 1933 there arose grower protests with respect to the auction market prices for such tobacco, which were at a ruinously low level. These protests arose first in Georgia and then spread to South Carolina and North

Carolina. Appeals were made to the Agricultural Adjustment Administration. Mass meetings of growers were held throughout the flue-cured tobacco belt, and, pending some action by the Federal Government, the markets in South Carolina and North Carolina were closed by official action of the respective Governors of these two states. The marketing in Georgia had been completed, and selling in Virginia had not yet commenced, so that the flue-cured tobacco industry was at a complete standstill. Conferences were held among the growers, the buyers and officials of the Agricultural Adjustment Administration in Washington, D. C. There was an insistent demand that immediate action be taken by the Federal Government to save the remainder of the 1933 crop from being sacrificed at the prices prevailing at the time of the closing of the markets. As a result, a marketing agreement was entered into between the principal buyers of flue-cured tobacco and the Secretary of Agriculture, pursuant to the provisions of Section 8 (2) of the Agricultural Adjustment Act of 1933, and this agreement had a salutary effect upon the prices subsequently received by the growers for the remainder of the 1933 crop of flue-cured tobacco.

X

Answering the additional paragraph to the bill of complaint mentioned in paragraph 3 of the amendment to the bill of complaint, the said defendant denies the conclusions of law therein contained.

XI.

Answering the additional paragraph to the bill of complaint mentioned in paragraph 4 of the amendment to the bill of complaint, the said defendant admits the allegations therein contained.

XII.

Answering the additional paragraph to the bill of complaint mentioned in paragraph 5 of the amendment to the bill of complaint, the said defendant admits the facts therein alleged, but denies the conclusions, legal and otherwise, therein contained.

And, having fully answered said bill of complaint and the amendment thereto, the United States of America, intervening defendant, prays that the bill of complaint herein, as amended, be dismissed.

(S) T. HOYT DAVIS,
United States Attorney.
(S) JOHN S. L. YOST,
Special Assistant to the Attorney General.

On September 3, 1938, the answer of defendants to the bill of complaint and amendment thereto was filed, said answer being as follows:

[Caption omitted in printing.]

Plea and answer of the defendants

Now come Nat Smith, doing business as Nat Smith's Warehouse, and also as Nat Smith's Brick Warehouse, B. B. Saunders, doing business as B. B. Saunders Warehouse No. 1, and also as B. B. Saunders Warehouse No. 2, Murrel Holderby and C. R. Townsend, doing business as Savannah Avenue Tobacco Warehouse, and Lee Moore, doing business as Alliance Warehouse, named as defendants in the petition of the plaintiffs and intervenor in the above cause, and for plea and answer allege:

1.

These defendants admit the allegations contained in paragraph 1 of plaintiff's original petition.

2.

These defendants admit the allegations contained in paragraph 2 of plaintiff's original petition.

3.

These defendants admit the allegations contained in paragraph 3 of plaintiff's original petition.

4.

These defendants admit the allegations contained in paragraph 4 of plaintiff's original petition.

5.

These defendants admit the allegations contained in paragraph 5 of plaintiff's original petition.

6.

These defendants admit the allegations contained in paragraph 6 of plaintiff's original petition.

7.

These defendants admit the allegations contained in paragraph 7 of plaintiff's original petition.

8.

These defendants admit the allegations contained in paragraph 8 of plaintiff's original petition.

9.

These defendants admit the allegations contained in paragraph 9 of plaintiff's original petition.

10.

In answer to paragraph 10 of the original petition of plaintiffs these defendants admit that, at the time of the preparation of said bill, none of the plaintiffs had been notified of the exact quota allotted, or to be allotted to each of them or to the farms cultivated by each of them during the year 1938. From information now on hand, defendants allege that a large number of said plaintiffs have raised and produced an amount of tobacco in excess of said quota. Filed records kept by these defendants will disclose the amount of said excess of tobacco sold in the tobacco warehouses of these defendants.

11.

Answering paragraph 11 of said petition, these defendants admit the allegations therein contained in so far as they apply to each petitioner who is subject to be penalized under the provisions of the Act therein referred to.

12.

Answering paragraph 12 of said petition, these defendants admit that at the time of the filing of said bill it was the intention of each of these defendants to deduct the amount equivalent to said penalty in accordance with the provisions of said Act and to forward same to the Secretary of Agriculture, and to pay to such petitioner as had produced the so-called "excess tobacco" the balance after deducting commissions and costs of sale. These defendants now allege that, because of filing of said suit and threats of future suits, they are placed in a position where for the protection of their own interests they do not now know what course to take in the premises with respect to the deduction and disposition of the equivalent of said penalties. These defendants admit that they have no intention of paying the equivalent of said penalties out of their own funds and admit that the deduction of same from the price paid producers in accordance with the provisions of said Act will result in the payment of the penalty by the producer.

13.

Answering paragraph 13 of said petition, these defendants allege that the allegations therein contained are largely conclusions of law and these defendants are unable to state with certainty whether or not the production and sale of tobacco by a farmer constitutes solely the business of farming, and are unable to state whether or not said production and sale directly affects interstate commerce.

14.

Answering paragraph 14 of said petition, these defendants allege that they are not at this time in position to state the amount of

pounds raised by each of petitioners in excess of their quota nor to state what will be the average market value of said excess, but allege that the average market value of same will be approximately —— cents per pound.

15.

Answering paragraph 15 of said petition, these defendants allege that it was their original intention to deduct the equivalent of said penalty from the price paid for the tobacco of each producer and to remit same to the Secretary of Agriculture. By reason of a restraining order entered in this cause on August 26, 1938, these defendants, unless otherwise directed by the Court, intend to pay into the registry of this Court an amount of money equivalent to said penalties which had been deducted by these defendants from the proceeds of the sales of excess tobacco sold on the floors of their respective warehouses. These defendants admit that, had they not been restrained by said order of this Court, they would have forwarded the equivalent of said penalties, so collected by them, to the Secretary of Agriculture; and, if that had been done by these defendants and should the plaintiffs have subsequently recovered judgment against these defendants in the amount of said penalties, collected by each of these defendants, these defendants would probably have been financially unable to pay the entire amount of said judgments and would have probably been reduced to insolvency.

16.

In answer to paragraph 16 of the original petition of plaintiffs, these defendants are unable either to admit or to deny the allegations contained in this paragraph of said petition because such allegations are mere conclusions of the pleader.

17.

In answer to paragraph 17 of the original petition of plaintiffs, these defendants are unable either to admit or to deny the allegations contained in this paragraph of said petition because such allegations are mere conclusions of the pleader.

18.

In answer to paragraph 2 of the amendment to the original petition of plaintiffs, these defendants admit all the allegations of this paragraph of said amendment except that which is contained in the last sentence thereof. These defendants are unable to admit or deny the allegations contained in the last sentence of this paragraph for the reason that the same are mere conclusions of fact and of law.

19.

In answer to paragraph 3 of said amendment these defendants admit that there is correctly set forth in this paragraph Section 31 (b) of what is known as the Agriculture Administration Act of 1938, but these defendants are unable to admit or deny the remainder of the allegations contained in this paragraph of said amendment because such allegations are mere conclusions of fact and of law.

20.

In answer to paragraph 4 of said amendment, these defendants admit the allegations therein contained.

21.

In answer to paragraph 5 of said amendment, these defendants admit the allegations of fact therein contained; but, these defendants are unable to admit or deny that said Act was passed and approved too late to be constitutionally applied to the 1938 tobacco crops of plaintiffs, and the provision of said Act, insofar as they apply to the tobacco crops of plaintiffs for the year of 1938 are violative of the provisions of the Constitution of the United States in that plaintiffs in the manner and under the conditions alleged in this paragraph will be deprivation of their property without due process of law in violation of the provisions of the 5th Amendment to the Constitution of the United States, because such allegations are mere conclusions of law on the part of the pleader.

22.

For further answer to plaintiffs petition as amended, these defendants show that under the circumstances and conditions disclosed by the admitted allegations contained in plaintiff's petition, these defendants now occupy a position analogous to that of an innocent and involuntary stakeholder holding the funds claimed by the petitioners and by the Secretary of Agriculture. They now come into Court and ask for the protection of this Court and for an order directing the disposition of such funds in such manner as will protect these defendants from the adverse claims of all parties to this case or that may hereafter be made parties thereto.

23.

These defendants further show that because of the facts above outlined, they should be relieved from the payment of court costs in this case regardless of the final outcome of same.

24.

These defendants further allege that it is, therefore, their only duty to give to the Court such assistance as they may be called upon to give in order to arrive at the facts in said cause and to assist the Court, in any way called upon, to reach a correct determination of the issues involved.

Wherefore, these defendants, having fully answered, pray:

(1) that, in any event, these defendants be relieved of any costs that may be incurred in this cause.

(2) that the Court shall pass such protective orders, judgments, and decrees as may protect these defendants from any loss by reason of the imposition of said penalties.

(3) that these defendants be decreed by the Court to be in a position analogous to a stakeholder of the funds collected by them as penalties as aforesaid and paid or to be paid into the registry of this Court.

(4) that these defendants shall have such other and further relief in the premises as to the Court may seem meet and proper.

(Signed) FRANKLIN & EBERHARDT,
Attorneys for the Defendants, Nat Smith, et al.

U. S. GOVERNMENT PRINTING OFFICE: 1938

In the District Court of the United States for the Middle District of Georgia, Valdosta Division

In Equity No. 97

JAMES H. MULFORD ET AL., PLAINTIFFS

v.

NAT SMITH ET AL., ORIGINAL DEFENDANTS

and

UNITED STATES OF AMERICA, INTERVENING DEFENDANT

STIPULATION OF FACTS AND EVIDENCE

It is hereby stipulated by and between the parties to the above-entitled cause, by their solicitors of record, that the said cause shall be heard for final decree and decided upon the issues hereinafter set forth arising under the pleadings herein and that, in order to expedite the hearing of said issues, the matters and facts contained in this stipulation may be taken by the court as true and as constituting all of the evidence and facts upon which, in addition to those matters and facts of which the court takes judicial notice, a decision may be rendered and a final decree entered herein: *Provided, however,* That each of the parties hereto expressly reserves the right to contend that any fact or evidence recited in this stipulation is not material or relevant to the issues herein and expressly reserves also the complete and full right to appellate review, as provided by law, of any decree which may be entered in this cause upon this stipulation. The exhibits hereinafter referred to are attached hereto and are hereby made a part hereof.

The following matters and facts are hereby stipulated and agreed upon:

I

The National Marketing Quota

The Secretary of Agriculture (hereinafter referred to as the "Secretary"), acting pursuant to and in accordance with the provisions of subsections (a) and (d) of section 312 of the Agricultural Adjust-

ment Act of 1938 (hereinafter referred to as the "act"), on February 18, 1938, found, from the latest available statistics of the Federal Government, that the "total supply" of flue-cured tobacco for the marketing year for such tobacco beginning July 1, 1937, exceeded the "reserve supply level" for such year and proclaimed the amount of such total supply to be 1,733,000,000 pounds, and the amount of such "reserve supply level" to be 1,681,000,000 pounds (Exhibit No. 1). Acting in like manner, the Secretary also determined and specified in such proclamation the amount of the national marketing quota in terms of the total quantity of such tobacco which may be marketed, which would make available during the marketing year for such tobacco beginning July 1, 1938, and ending June 30, 1939, a supply of such tobacco equal to the "reserve supply level." The amount of the national marketing quota so determined and specified by the Secretary was 705,000,000 pounds.

The "total supply" of flue-cured tobacco for the marketing year for such tobacco beginning July 1, 1937, consisted of the "carry-over," as defined by the act, of such tobacco on July 1, 1937, which amounted to 883,000,000 pounds and of the "estimated production" of such tobacco in the United States during the calendar year 1937, amounting to 850,000,000 pounds, making a "total supply" of 1,733,000,000 pounds.

The "reserve supply level," as given above, consists of the "normal supply," as defined by the act, amounting in this case to 1,601,000,000 pounds, and five percent thereof, amounting in all to 1,681,000,000 pounds as above. The applicable "normal year's domestic consumption and exports" amounted to 730,000,000 pounds, consisting of the domestic consumption figure of 360,000,000 pounds and the export figure of 370,000,00 pounds. The consumption figure of 360,000,000 pounds, plus 175 percent thereof amounted to 630,000,000 pounds, and the export figure of 370,000,000 pounds, plus 65 percent thereof amounting to 241,000,000 pounds, together constituted the total "normal supply" of 1,601,000,000 pounds as stated above.

The national marketing quota of 705,000,000 pounds is the result of deducting from the reserve supply level of 1,681,000,000 pounds the estimated carry-over as of July 1, 1938, amounting to 976,000,000 pounds. The carry-over is the result of deducting from the total supply of 1,733,000,000 pounds for the marketing year beginning July 1, 1937, the estimated domestic consumption of 350,000,000 pounds and estimated exports of 407,000,000 pounds for such marketing year.

II

The Producer Referendum

The Secretary, acting pursuant to and in accordance with subsections (c) and (d) of section 312 of the act, conducted a referendum of farmers who were engaged in the production of the 1937 crop of

of or opposed to the aforesaid national marketing quota for such tobacco. The Secretary, on February 18, 1938, issued instructions for the holding of the referendum, and fixed March 12, 1938, as the day upon which the referendum should be held (Exhibit No. 2). The referendum was held on March 12, 1938, and the result thereof was as follows: 255,095 votes cast, of which 219,842 votes, or 86.2 percent, were favorable to the national marketing quota, and 35,253 votes, or 13.8 percent, were opposed thereto. The Secretary, acting pursuant to and in accordance with the aforesaid provisions of the act, on March 25, 1938, proclaimed the result as above of the referendum (Exhibit No. 3). A summary of the results of the referendum by States is as follows:

State	Number of votes cast			Percentage in favor
	Yes	No	Total	
Alabama	32	0	32	100.0
Florida	1,969	1,511	3,480	56.6
Georgia	16,083	9,854	25,937	62.0
North Carolina	151,503	17,340	168,843	89.7
South Carolina	25,191	2,905	28,096	89.7
Virginia	25,064	3,643	28,707	89.3
Total	219,842	35,253	255,095	86.2

III

General Apportionment and Adjustment of Marketing Quota

The Secretary, acting pursuant to and in accordance with subsections (a), (c), and (e) of section 313 of the act, as amended, made, on July 22, 1938, the following determination of the apportionment and adjustment of the national marketing quota proclaimed as aforesaid (Exhibit No. 4):

States and new farms (i. e., farms on which tobacco is produced for the first time in 5 years)	Apportionment of national quota proclaimed February 18, 1938	Adjustment pursuant to Section 313 (a) to bring State up to 75% of 1937 production	Adjustment pursuant to Section 313 (e), 4% increase all States	Adjustment pursuant to Section 313 (e) to bring State up to minimum State poundage	Totals as apportioned and adjusted
	1,000 pounds	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*
Virginia	62,940	0	2,518	0	65,458
North Carolina	466,998	0	18,680	0	485,678
South Carolina	77,126	3,934	3,242	0	84,302
Georgia	68,320	0	2,733	0	71,053
Florida	8,393	2,191	423	0	11,007
Alabama	73	15	4	328	420
New Farms	21,150	0	0	0	21,150
Total U. S.	705,000	6,140	27,600	328	739,068

The above determination was made on the basis of estimates as to requirements for small farms.

When information became available showing the requirement of small farms, the Secretary, on August 13, 1938, made a revised determination of the apportionment and adjustment made as aforesaid as follows (Exhibit No. 5):

States and new farms (i. e., farms on which tobacco is produced for the first time in 5 years)	Apportionment of national quota proclaimed February 18, 1938	Adjustment pursuant to Section 313 (a) to bring State up to 75% of 1937 production	Adjustment pursuant to Section 313 (c), 4% increase all States	Adjustment pursuant to Section 313 (e) to bring State up to minimum State poundage	Total apportionment and adjustment
	1,000 pounds	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*
Virginia	66,215	0	2,649	0	68,864
North Carolina	469,071	0	18,763	0	487,834
South Carolina	69,212	11,848	3,242	0	84,302
Georgia	71,637	0	2,865	0	74,502
Florida	7,645	2,939	423	0	11,007
Alabama	70	18	4	328	420
New Farms	21,150	0	0	0	21,150
Total U. S.	705,000	14,805	27,946	328	748,079

IV

Administrative Regulations

The Secretary, acting pursuant to and in accordance with the applicable provisions of the act, as amended, issued the following regulations and instructions, and prescribed the following forms to be used in connection therewith, in respect to the establishment, identification, transfer, notice, and review of farm marketing quotas for flue-cured tobacco for the marketing year beginning July 1, 1938, and ending June 30, 1939, and in respect also to the collection of penalties for the marketing during such marketing year of flue-cured tobacco in excess of any farm marketing quota:

(1) Regulations Pertaining to Flue-cured Tobacco Marketing Quotas for the 1938–39 Marketing Year (Form 38–Tobacco 25), issued July 22, 1938 (Exhibit No. 6). These regulations relate generally to farm marketing quotas, to the marketing of flue-cured tobacco, and to penalties, marketing cards, transfer of quotas, and records and reports. The following forms were prescribed for use in connection with such regulations:

(a) 1938–39 Marketing Card (Form 38–Tobacco 14) (Exhibit No. 6 (a));

(b) Operator's Receipt for Marketing Card (Form 38–Tobacco–13) (Exhibit No. 6 (b));

(c) Request for Sale Subject to Penalty (Form 38–Tobacco 27) (Exhibit 6 (c));

(d) Memorandum of Warehouse Sale (Form 38–Tobacco 17) (Exhibit 6 (d));

(e) Memorandum of Nonwarehouse Sale (Form 38–Tobacco 18) (Exhibit 6 (e));

(f) Certificate of Exemption (Form 38–Tobacco 25) (Exhibit 6 (f));

(g) Authorization for Transfer (Form 38–Tobacco 23) (Exhibit 6 (g));

(h) Warehouseman's Transfer Agency Agreement (Form 38–Tobacco 26) (Exhibit 6 (h));

(i) Record of Quota Transfer (Form 38–Tobacco 15) (Exhibit 6 (i));

(j) Warehouseman's Record of Transfers (Form 38–Tobacco 24) (Exhibit 6 (j));

(2) Instructions for Determination of Flue-cured Tobacco Farm Marketing Quotas for 1938 (Form 38–Tobacco 11), issued June 16, 1938, including supplements thereto (Exhibit 7). The following forms were prescribed for use in connection with such instructions:

(a) Sales Record Sheet (Form 38–Tobacco–7) (Exhibit 7 (a));

(b) Farm Data Sheet (Form 38–Tobacco–8) (Exhibit 7 (b));

(c) Farm Quota Sheet (Form 38–Tobacco–9) (Exhibit 7 (c)).

(3) Regulations Governing the Publication, Notice, and Review of Farm Marketing Quotas (Form 38–A.A.A.–2), issued July 13, 1938 (Exhibit 8). The following forms were prescribed for use in connection with such regulations:

(a) Listing Sheet for Use in Publication of Farm Marketing Quotas (Form 38–Tobacco–10) (Exhibit 8 (a));

(b) Notice of Farm Marketing Quota for Flue-cured Tobacco (Form 38–Tobacco–12) (Exhibit 8 (b));

(c) Forms for use of review committees:

(i) Oath to be taken by each member of committee (Exhibit 8 (c));

(ii) Application for Review of Farm Marketing Quotas (Form 38–AAA–3) (Exhibit 8 (d));

(iii) Notice of Untimely Filing of Application for Review (Form 38–AAA–4) (Exhibit 8 (e));

(iv) Notice of Insufficiency of Application for Review (Form 38–AAA–5) (Exhibit 8 (f));

(v) Notice of Hearing on Application for Review (Form 38–AAA–6) (Exhibit 8 (g));

(vi) Temporary Order of Dismissal of Application for Review (Form 38–AAA–7) (Exhibit 8 (h));

(vii) Determination of Review Committee on Application for Review (Form 38–AAA–8) (Exhibit 8 (i)).

(4) The form of Articles of Association of County Agricultural Conservation Associations (Form ACP–8/71) (Exhibit 8½), under which the organization of county and community committees is perfected, which committees are utilized by the Secretary of Agriculture in administering the tobacco quota provisions of Title III of the Agricultural Adjustment Act of 1938.

V

The Plaintiffs

The plaintiffs herein are citizens and residents respectively of Lowndes County, Georgia, and the adjoining counties in South Georgia and North Florida, all in the vicinity of Valdosta, Georgia. Each of them is engaged in general farming and each grows, amongst other agricultural commodities, what is commonly called flue-cured tobacco on his farm located in the county of his residence or in an adjoining county.

VI

The Defendants

The defendants herein are tobacco auction warehousemen, doing business in the city of Valdosta, Lowndes County, Georgia, and each of the said defendants is a resident of the said State and county.

VII

Marketing Quotas for Farms of Plaintiffs

In accordance with the applicable provisions of the act, as amended, and the regulations and the instructions issued by the Secretary thereunder, there was established for each of the farms of the plaintiffs a marketing quota for flue-cured tobacco for the marketing year beginning July 1, 1938, and ending June 30, 1939. Each quota thus established was for an amount less than the amount of such tobacco marketed from the farm in 1938. The plaintiffs do not complain of the amount, as such, of their respective farm marketing quotas. Each of the plaintiffs in 1938 marketed flue-cured tobacco from his farm through at least one of the defendants, and each of the defendants sold such tobacco at auction for one or more of the plaintiffs. None of the tobacco so marketed was intended for nicotine or other by-products uses. The tobacco was hauled by the plaintiffs to the said warehouses for the purpose of sale either on trucks, wagons, or other similar private conveyances. The customary method of marketing flue-cured tobacco is through tobacco warehouses such as are operated by defendants.

Flue-cured tobacco was thus marketed by each of the plaintiffs in excess of the marketing quota established for the farm of such plaintiff and, if the applicable provisions of the act are valid, the defendants are liable for the payment to the Secretary of the pen-

alty prescribed by the act for the marketing of flue-cured tobacco in excess of a farm marketing quota. At the time of the filing of the original bill of complaint in this case, the defandants had announced to the plaintiffs the intention of the defendants to deduct, in accordance with the provisions of the act, from the purchase price of the excess tobacco sold through defendants an amount equivalent to the penalty prescribed by the act to be paid by the defendants to the Secretary.

An order of this court requires the defendants to pay to the clerk of this court, subject to the further order of this court, the equivalent of such sums of money as are otherwise payable, under the provisions of the act, to the Secretary as penalties.

VIII

The 1938 Tobacco Crop—Establishment of Quotas and Maturity of Crop

The marketing season for flue-cured tobacco in Georgia and Florida begins on or about the first day of August and ends on or about the first day of September. It was during this season in 1938 that the plaintiffs marketed their flue-cured tobacco through the defendants. Notice of the marketing quota for the farm of each of the plaintiffs was given to such plaintiff shortly before the opening of auction markets of defendants. Prior to the time of receiving said notice, each of the plaintiffs had largely, if not wholly, completed the planting, cultivating, harvesting, curing, and grading of his flue-cured tobacco. Prior to the receipt of such notice, no one of the plaintiffs knew, or had any way of knowing, the exact amount of his farm marketing quota but, at the time of the preparation of the original bill of complaint in this cause, each of the plaintiffs had reached the conclusion, based on available information indicating a large yield in Florida and Georgia, that he would probably market flue-cured tobacco in excess of any quota for his farm. At the time of the approval of the act by the President on February 16, 1938, each of the plaintiffs had planted out his seedbeds and about the middle of March began the transplanting of plants in the fields.

In accordance with the custom of tobacco growers in South Georgia and North Florida, the plaintiffs began to arrange for the planting of their 1938 tobacco crop in December 1937. At, or about that time, it was necessary, in following the best methods of producing tobacco, for the plaintiffs to prepare with great care, trouble, and expense the tobacco beds in which the seeds are sown. It was necessary to cultivate the seedbeds carefully and sow the seed therein, water the seedbeds whenever they needed water, cover the beds with cloth in order that the plants might be protected from the cold, and otherwise to take care of the plants therein until they reached a size requisite for transplanting. It was then necessary that transplanting take place in the fields, prepared and fertilized for that purpose. The fields were fertilized with a large amount of expensive fertilizer and care-

fully cultivated. The tobacco plants were sprayed diligently in order to insure a reasonable degree of success in producing a fair crop of tobacco. The harvesting of the crop began during the month of June 1938. In the month of July 1938, harvesting continued and was followed by the curing and grading of the tobacco. All of this requires much labor, care, and expense. The major portion of the flue-cured tobacco crop in South Georgia and North Florida is usually gathered and ready for market by the first day of August and this condition existed in the year 1938. Practically all marketings from the 1938 Georgia and Florida flue-cured tobacco crop have been completed, the total amounting to approximately 107,000,000 lbs. sold for $21,700,000. Of this, approximately 8,280,000 lbs. were marketed in excess of farm marketing quotas, the penalty prescribed by the act upon these marketings being approximately $374,000.

The production of flue-cured tobacco requires, at prevailing price levels, a cash outlay of around $30 to $40 per acre for fertilizer, plant bed covering, twine, poison for insects and worms, etc. Use of land and of mules, ploughs, curing barns, storage barns, and other permanent and semi-permanent equipment will require average expenditures over a period of years ranging from $20 to $30 per acre, with a cash outlay for repairs and replacements of an indeterminate amount from year to year. The other principal item of cost in the production of flue-cured tobacco is represented by a labor requirement of between 300 to 400 man hours per acre for the year. Studies have been made which indicate that usually as among producers the total cost per pound has varied from 10 cents to 20 cents. The difference in cost indicated by these studies results from variations in yields per acre and in the value assigned to labor and the items of cost not requiring specific cash outlay, such as equipment, land, etc.

Available information indicates that with prevailing levels of prices for commodities bought by farmers, there would be many farmers who would receive less than the cost of producing their 1938 crop of tobacco if such crop were sold at an average price equal to one-half of the average price received by such farmers for their tobacco in 1938. Stated generally, one-half of the prices received by farmers for their tobacco in 1938 is less than the cost of producing tobacco on many farms. The number of farmers who would receive an amount equal to the cost of production would depend on the value assigned to operator's family labor, and other items not requiring current cash outlay.

IX

The Issues Presented

The issues in this case are confined to the points of law presented by the following contentions of the plaintiffs:

(1) The contention of the plaintiffs that the applicable provisions of the act are, on their face, constitutionally invalid.

(2) The contention of the plaintiffs that the farm marketing quotas established for their respective farms, under the provisions of the act, deprive plaintiffs of their property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States, by reason of the fact that the plaintiffs had seeded their flue-cured tobacco beds and planted, cultivated, and harvested their 1938 flue-cured tobacco crop prior to the establishment of marketing quotas for their respective farms. Without waiving their objection, under paragraph (1) above, that the applicable provisions of the act are vague and indefinite, it is conceded by the plaintiffs that the actions of the Secretary taken as above in proclaiming the national marketing quota, in making the general apportionment and adjustment of quotas, and in the establishment of marketing quotas for the respective farms of the plaintiffs were in accordance with such provisions of the act and the regulations and instructions thereunder, and that all of such quotas were accurately determined, in accordance with the regulations and instructions which the Secretary has promulgated.

X

Congressional Investigation of the Tobacco Industry

The Congress, in enacting the Agricultural Adjustment Act of 1938, had before it a vast accumulation of facts relating to the tobacco industry. In addition to numerous prior hearings in connection with previously proposed or enacted legislation relating to farm problems, Congress in the fall of 1937 conducted many hearings throughout the Nation in preparation for its consideration of other proposed legislation; culminating in the enactment of the Agricultural Adjustment Act of 1938. In response to Senate Resolution 158, 75th Congress, Second Session, many hearings were held before the Subcommittee of the Senate Committee on Agriculture and Forestry. The resolution provided for an investigation of agricultural commodity prices, of an ever-normal granary for major agricultural commodities, and of the conservation of national soil resources. The commodities covered by this investigation were tobacco, cotton, rice, wheat, and corn. The hearings on cotton, tobacco, and rice took place in September, October, and November, 1937, in Montgomery, Alabama; Atlanta, Georgia; Winston-Salem, North Carolina; Columbia, South Carolina; Louisville, Kentucky; Houston, Texas; Dallas, Texas; Memphis, Tennessee; New Orleans, Louisiana; Springfield, Illinois; Jefferson City, Missouri; and Oklahoma City and other places in Oklahoma. The matters covered by the hearings are contained in a document entitled "General Farm Legislation", comprising 4633 pages, of which 1916 pages relate to cotton, tobacco, and rice.

The Congress also had before it an extensive report entitled "Principal Farm Products—Agricultural Income Inquiry," comprising 562 typewritten pages, made by the Federal Trade Commission on

March 2, 1937, in response to Public Resolution No. 61, 74th Cong adopted August 27, 1935, as amended by Public Resolutions Nos and 112, 74th Congress. This report consists of several volumes. facts of the tobacco industry constitute an important part of report. The report deals with (a) the decline in agricultural inc in comparison with changes in incomes of principal manufacturers distributors; (b) shares of the consumer's dollar going to farm manufacturers, and distributors; (c) control of the manufacture distribution of principal farm products; (d) the legal aspects of inquiry; (e) the extent and effect of cooperative marketing; (f) investments and profits of manufacturers and distributors; (g) growth in capitalization and assets of manufacturers and distri tors; and (h) the channels of manufacture and distribution, etc.

The Congress also had before it the following official reports:

(1) A pamphlet entitled "American Tobacco Types, Uses, a Markets" (Circular No. 249, United States Department of Agric ture, 1933), comprising 88 pages, by Charles E. Gage, Senior Ma keting Specialist, in Charge, Tobacco Section, Bureau of Agricultu Economics.

(2) A report entitled "Marketing of Leaf Tobacco in the Flu cured Districts of the States of North Carolina and Georgia," co prising 54 pages, to the Federal Trade Commission, made by Herb L. Anderson, Chief Examiner of the Commission, on May 14, 19 at the instance of Senator Simmons and Congressman Kerr of Nor Carolina, Senator George and Congressman Edwards of Georgia, a Congressman Yon of Florida. In the report, there was discusse (a) regions of production; (b) demand; (c) production; (d) meth of marketing; (e) cooperative associations; (f) cigar prices, produ tion, etc.; (g) financial conditions of four principal tobacco man facturers; and (h) United States Government grading system.

(3) A report entitled "Cooperative Marketing," comprising 7 pages made by the Federal Trade Commission on April 30, 1928, response to Senate Resolution No. 34, 69th Congress, Special Sessi adopted March 17, 1925. This report dealt with (a) cooperati marketing among tobacco growers; (b) cooperative organizatio (c) cooperative association financing; (d) external and internal pro lems of cooperative marketing associations; (e) cooperative suspe sions and failures; and (f) development of cooperative law.

(4) A report entitled "The Tobacco Industry", comprising 1 pages, made by the Federal Trade Commission on December 23, 19 in response to Senate Resolution 329, 68th Congress, 2d Sessi adopted February 9, 1925 (Senate Document No. 34, 69th Congre 1st Session). This report dealt with (a) tobacco marketing; (the relation between the American and Imperial Tobacco Compani and (c) the factors affecting the progress of cooperative associatio

(5) A report entitled "Prices of Tobacco Products", comprisi 109 pages, made by the Federal Trade Commission on January

1922, in response to Senate Resolution No. 129, 67th Congress, adopted August 9, 1921. This report dealt with (a) supply and demand factors; (b) prices; (c) rate of return on investment of the successor companies; (d) cooperation among tobacco growers; (e) restriction of competition in the purchase of leaf tobacco; and (f) restriction of competition in the sale of manufactured tobacco products, etc.

(6) A report entitled "The Tobacco Industry", comprising 162 pages, made by the Federal Trade Commission on December 11, 1920, in response to House Resolution No. 533, 66th Congress, adopted June 3, 1920. This report dealt with (a) price fluctuations; (b) causes of decline in prices; and (c) evidence as to violation of the anti-trust laws.

(7) A report entitled "The Tobacco Industry", comprising 1,304 pages, made by the Commissioner of Corporations on February 25, 1909, September 24, 1911, and March 15, 1915, to the Department of Commerce and Labor. This report dealt with (a) the position of the tobacco combination in the industry; (b) compensation, investment, and earnings; and (c) prices, costs, and profits.

XI

Classes of Tobacco

While tobacco is of American origin, it is not exclusively an American product at the present time. Annual world production is now about 5 billion pounds, a third of which is produced within the United States. The recent development of the growth of types of tobacco in foreign countries which compete with types grown in the United States has materially affected the production and marketing of certain types of our tobacco. However, certain tobacco regions in the United States produce kinds of tobacco that are unique in the world as to quality and desirability for particular purposes.

Tobacco has occupied an important place in the commercial development of the United States from earliest Colonial times. Even before the founding of Jamestown in 1607, there was an extensive demand for American tobacco in England and on the Continent. The first extensive cultivation of tobacco took place in Virginia. England imported this tobacco. For the early settlers of Virginia and Maryland, tobacco was not only the sole money crop—it was money itself.

By the close of the eighteenth century, tobacco culture had spread to other regions in the United States, including Kentucky, Tennessee, and Ohio. The South Atlantic States, however, were the chief sources of American tobacco until the Civil War during which time Kentucky obtained first place and has since been first or second only to North Carolina.

The characteristics of the leaf are influenced greatly by soil and climatic conditions. This influence is more pronounced in respect to tobacco than almost any other important agricultural commodity.

Its cultivation requires particular knowledge and experience as well as relatively large investments in special equipment. The growing of tobacco is a speciality, and the manufacturing industry looks to well-defined areas for its supply.

The several kinds of tobacco, broadly classified, are flue-cured, Burley, Maryland, dark air-cured, fire-cured, and cigar-filler, binder, and wrapper. Each of these tobaccos possesses certain well-known characteristics which make it desirable for special purposes of manufacture or for export, and the region in which each kind is produced is rather clear-cut and distinct (Exhibit No. 9—Map of Tobacco Growing Areas). In practically all regions producing tobacco, the acreage of land devoted to the crop is much less than the available land.

The types comprising flue-cured tobacco are known as Nos. 11, 12, 13, and 14. The flue-cured tobacco region is divided into two general districts commonly referred to as the old belt and the new belt, corresponding roughly to the physiographic areas known as the Piedmont and Atlantic Coastal Plains. Old belt tobacco is known as Type 11 and is produced on loam and sandy loam soils. Types 12, 13, and 14 comprise the new belt group. They are grown on the more sandy and gravelly soil of marine origin in the coastal plains. A third district, known as the middle belt, consists of a rather narrow strip in North Carolina along the fall line which divides the Piedmont and Coastal Plain regions. In this strip, where over-lapping has brought about commingling of different classes of soil, the tobacco possesses some of the characteristics of both the old belt and the new belt. Type 12, known as eastern North Carolina tobacco, is produced in a part of North Carolina lying east of the fall line. Type 13, known as South Carolina tobacco, is produced in the State of that name and in a small adjoining part of North Carolina. Type 14 is produced in the southern part of Georgia, northern Florida, and southeastern Alabama (Exhibit 9—Map of Tobacco Growing Areas). The old belt flue-cured tobacco is generally heavier in body and darker in color than the new belt tobacco. Differences among the types in the new belt group are traceable principally to variations in soil.

XII

Culture of Flue-cured Tobacco

The production of flue-cured tobacco requires more hours of man and workstock labor than most other farm products. Cultivation begins with the preparation of seed beds which takes place from December to February in Georgia and Florida and from December to March in the more northern producing States. Careful prepartion and protection of the bed generally determines the degree of success obtained in securing a supply of plants for setting in the field.

The preparation of the land devoted to tobacco begins soon after the seed beds are sown. Immediately before transplanting takes place, relatively large quantities of high grade fertilizer, averaging about 1,000 pounds per acre, are applied to the land. In the course of cultivation, additional quantities of fertilizer are often applied.

Transplanting of flue-cured tobacco usually begins around the first of April in Florida, Georgia, and South Carolina, and extends into May and early June in North Carolina and Virginia. The number of plants set per acre varies upward from about 6,000. Soon after the plants "take root" and begin to grow, cultivation begins and continues throughout the growing season. This cultivation consists of plowing, poisoning for insects and worms, topping and removal of suckers.

When the leaves begin to mature, harvesting and curing begins and continues until all the suitable leaves on the stalk have been removed. The process of harvesting is through "cropping" or pulling off the leaves as they mature. Four to six "croppings" are usually required to complete the harvesting of a crop of tobacco. The leaves are strung on sticks and placed in the curing barn where heat is applied continuously through a furnace and "flues" or large pipes laid about the floor of the barn so that the leaf does not come in contact with smoke from the fuel used. Curing requires from three to four days. After the tobacco is cured, it is packed away to be later removed from the sticks, sorted or graded, and prepared for marketing. Harvesting and curing begin in Florida, Georgia, and Alabama in June and early July where the auction markets open in late July or early August. Harvesting and curing comes later in the year in North Carolina and Virginia, lasting sometimes into October.

Flue-cured tobacco is often referred to as "bright tobacco" and owes its name primarily to the method employed in curing the leaf. The curing process is rapid and is completed within a few days. Flue-cured tobacco has come to be by far the world's most important commercial class of tobacco in quantity produced and marketed. Among the outstanding characteristics of the cured leaf are its bright lemon or orange color, its distinctive aroma, and its high content of sugar. Its principal use is for export and domestic manufacture of straight and blended cigarettes, pipe-smoking tobacco, and plug-chewing tobacco, which has resulted in a well-established demand for flue-cured tobacco. Over a long period of years the tastes of consumers for tobacco have become accustomed to certain qualities. The trade, developed by catering to these tastes, looks to certain well-defined areas for continued supplies of the grades and qualities of flue-cured leaf tobacco. As a consequence, markets have been established in the flue-cured belt where the buyers and farmers assemble for the sale of the tobacco. The present demand for flue-cured tobacco arises principally from the use of cigarettes in the United States and foreign countries.

XIII

Leaf Tobacco Production

Tobacco is produced in more than half the States of the Union, the principal commercial areas being in the States of Alabama, Connecticut, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. The average annual production for the five-year period, 1932–36, was 1,184,518,000 pounds. The total production in 1935 was 1,297,198,000 pounds; in 1936, 1,155,385,000 pounds; and in 1937, 1,553,523,000 pounds. Table 1 shows the United States average annual farm production during the five years 1932–1936 by States and principal classes of tobacco.

The six States of Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia accounted for nearly 90 percent of the total production in this period, and North Carolina and Kentucky produced approximately 60 percent of the total production. Flue-cured tobacco, with an average annual production of 631,633,000 pounds, and Burley tobacco, with an average annual production of 274,798,000 pounds, amounted to approximately 75 percent of the total production of all kinds of tobacco during the period (Table 1).

Flue-cured tobacco is produced in the six States of Alabama, Florida, Georgia, North Carolina, South Carolina and Virginia. The average annual production of such tobacco in these States for the five-year period 1932–1936 was 631,633,000 pounds (Table 1). The production of such tobacco in such States in 1935 was 811,238,000 pounds; in 1936, 682,907,000 pounds; and in 1937, 855,000,000 pounds. Table 2 shows the annual production of flue-cured tobacco in the United States by States for the nineteen year period, 1919 to 1937.

The production of flue-cured tobacco in 1937 in these six States was as follows: Alabama, 118,000 pounds; Florida, 14,112,000 pounds; Georgia, 73,935,000 pounds; South Carolina, 108,080,000 pounds; North Carolina, 586,755,000 pounds; and Virginia, 72,000,000 pounds; making a total of 855,000,000 pounds (Table 2). Flue-cured tobacco constitutes the principal kind of tobacco produced in each of these six States (Table 1).

Tables, 2a, 2b, and 2c show flue-cured tobacco acreage, yield, production, price, and farm value for the period 1928–1937 for the United States, Virginia, North Carolina, South Carolina, Georgia, and Florida, respectively.

The acreage devoted to tobacco production is usually a small portion of the total acreage cultivated on the farm. The general scheme of farming involves many share-croppers or tenants. The crop frequently is financed by the landowner or some party other than the actual producer.

1.—*Tobacco: Average Annual Production, By Principal Kinds, By States, 1932–36*

State	Flue-cured	Burley [1]	Mary-land	Fire-cured and Dark Air-cured	Cigar Filler and Cigar Binder	Cigar Wrapper	Total All Kinds	Percent of U. S. Total
	1,000 pounds	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*Percent*
ticut					15, 583	4, 493	20, 076	1. 7
	4, 306				346	1, 665	6, 317	.5
	50, 847				216	362	50, 925	4. 3
		6, 656		731	[2] 152		7, 539	.6
		258					258	[3]
ky		191, 806		76, 181			267, 987	22. 6
and			27, 302				27, 302	2. 3
husetts					5, 884	988	6, 872	.6
ota					455		455	[4]
rt		4, 822					4, 822	.4
ork					828		828	.1
Carolina	451, 108	5, 399					456, 507	38. 5
		10, 149			16, 699		26, 848	2. 3
rivania					30, 330		30, 330	2. 6
Carolina	69, 602						69, 602	5. 9
see		44, 858		54, 980			99, 838	8. 4
a	56, 220	8, 540		21, 306			86, 066	7. 3
Virginia		2, 310					2, 310	.2
nsin					19, 586		19, 586	1. 7
na [4]	50	[3]					50	[3]
United States	631, 633	274, 798	27, 302	153, 198	90, 079	7, 508	1, 184, 518	100. 0

all quantities of Burley tobacco are also produced in the States of Illinois, South Carolina, Georgia ssa, Alabama, and Oklahoma.
ar average.
s than one-tenth of one percent.
timated from records of the Agricultural Adjustment Administration, United States Department of ulture.
plied from reports of the Bureau of Agricultural Economics, United States Department of Agriculture

TABLE 2.—*Tobacco, Flue-cured: Production by States, 1919–1937*

Year	Virginia	North Carolina	South Carolina	Georgia	Florida	Alabama	United States
	1,000 pounds	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds* [1]	*1,000 pounds*
	67, 327	319, 276	78, 660	11, 621			476, 884
	114, 428	423, 703	66, 150	11, 687			615, 968
	62, 568	246, 540	43, 230	6, 456			358, 794
	96, 683	271, 170	43, 560	4, 026			415, 439
	97, 937	396, 354	77, 214	9, 099	132		580, 736
	81, 475	276, 819	47, 530	29, 818	1; 693		437, 335
	77, 845	373, 370	72, 750	47, 859	3, 260		575, 084
	82, 325	378, 274	57. 915	39, 078	2, 480		560. 072
	94. 724	482, 962	79, 083	57, 931	4, 069		718, 789
	74, 278	493, 132	84, 360	82, 894	4, 435		739, 099
	85, 050	484, 636	87, 320	87, 906	5, 100		750, 012
	76, 300	581, 200	98, 600	103, 304	5, 767		865, 171
	60, 000	476, 382	69, 870	58, 930	4. 350		669, 532
	32, 240	288, 750	39, 440	12, 075	1, 200		373, 705
	53, 720	530, 133	88, 580	57, 246	3. 700		733. 379
	52, 875	412, 055	56, 880	31, 562	3, 408		556, 780
	74, 390	572, 625	89, 760	68, 400	6, 020	43	811, 238
	67, 875	451, 975	73, 350	82, 450	7, 200	57	682, 907
	72, 000	586, 755	108, 080	73, 935	14, 112	118	855, 000

timated from records of the Agricultural Adjustment Administration, United States Department culture.
plied from reports of the Bureau of Agricultural Economics, United States Department of Agricul-

TABLE 2a.—*Tobacco, Flue-Cured: Acreage, Yield, Production, Price, Farm Valu*

UNITED STATES[1]

Year	Acreage	Yield	Production	Price per Pound	Farm Valu
	Acres	*Pounds*	*1,000 Pounds*	*Cents*	*1,000 Dollars*
1928	1,119,900	660	739,099	17.3	128,0
1929	1,085,700	691	760,012	18.0	136,8
1930	1,144,200	756	865,171	12.0	103,8
1931	979,500	684	669,532	8.4	56,1
1932	617,500	605	373,705	11.6	43,4
1933	920,600	797	733,379	15.3	112,1
1934	684,200	814	556,780	27.3	151,9
1935	874,000	928	811,195	20.0	162,1
1936	864,500	790	682,850	22.2	151,5
1937	973,300	878	854,882	23.0	196,7

[1] No data for Alabama are included in the above compilation. Production data for Alabama are shown in Table 2.

VIRGINIA

1928	138,500	536	74,278	17.1	12,7
1929	135,000	630	85,050	17.4	14,7
1930	140,000	545	76,300	7.9	6,0
1931	100,000	600	60,000	6.5	3,9
1932	62,000	520	32,240	8.1	2,6
1933	79,000	680	53,720	15.9	8,5
1934	70,500	750	52,875	28.1	14,8
1935	86,500	860	74,390	20.1	14,9
1936	90,500	750	67,875	22.3	15,1
1937	100,000	720	72,000	22.2	15,9

Compiled from Reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

TABLE 2b.—*Tobacco, Flue-cured: Acreage, Yield, Production, Price, Farm Valu*

NORTH CAROLINA

Year	Acreage	Yield	Production	Price Per Pound	Farm Value
	Acres	*Pounds*	*1,000 Pounds*	*Cents*	*1,000 Dollars*
1927	712,400	692	493,132	19.0	93,6
1929	729,300	665	434,636	18.5	80,4
1930	768,000	757	581,200	12.9	74,9
1931	688,500	692	478,582	8.6	41,1
1932	462,500	624	288,750	12.1	34,9
1933	667,800	794	530,133	16.1	85,5
1934	486,500	847	412,055	28.6	117,9
1935	612,500	935	572,625	20.3	116,1
1936	591,000	765	461,975	22.8	102,9
1937	665,000	882	586,755	24.0	140,8

Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

SOUTH CAROLINA

1928	148,000	570	84,360	12.7	10,7
1929	118,080	740	87,320	15.5	13,5
1930	116,000	850	98,600	12.0	11,8
1931	102,000	685	69,870	9.2	6,4
1932	68,000	580	39,440	11.3	4,4
1933	103,000	860	88,580	12.6	11,1
1934	72,000	790	56,880	21.6	12,2
1935	96,000	935	89,760	18.8	16,8
1936	90,000	815	73,350	19.9	14,5
1937	112,000	965	108,080	20.8	22,4

[1] Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

TABLE 2c.—*Tobacco, Flue-cured: Acreage, Yield, Production, Price, Farm Value*

GEORGIA

Year	Acreage	Yield	Production	Price Per Pound	Farm Value
	Acres	*Pounds*	*1,000 Pounds*	*Cents*	*1,000 Dollars*
928	113,900	728	82,894	12.8	10,643
929	96,800	910	87,906	18.4	16,175
930	112,900	915	103,304	9.9	10,227
931	83,000	710	58,930	6.4	3,772
932	23,000	525	12,075	10.4	1,256
933	65,800	870	57,246	11.3	6,469
934	60,500	625	31,562	18.7	5,902
935	72,000	950	68,400	18.8	12,859
936	85,000	970	82,450	21.0	17,314
937	79,500	930	73,935	19.6	14,491

Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

FLORIDA

928	7,100	625	4,435	12.3	544
929	6,500	750	5,100	18.1	923
930	7,300	790	5,767	10.4	600
931	6,000	725	4,350	6.6	287
932	2,000	600	1,200	11.0	132
933	5,000	740	3,700	12.0	444
934	4,700	725	3,408	20.0	682
935	7,000	860	8,020	17.7	1,068
936	8,000	900	7,200	22.0	1,584
937	16,800	840	14,112	21.1	2,978

Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

XIV

Marketing of Tobacco Leaf

There are approximately 750,000 families engaged in the production and marketing of tobacco. Of this number, around 300,000 families are engaged in the marketing and production of flue-cured tobacco. During most years some part of the crop is not marketed unless the price is favorable. In the case of flue-cured tobacco, statistics showing production are based on marketings and do not include the amount of tobacco withheld from market. In 1931 several million pounds of tobacco in Virginia was not offered for sale by the producers. In some instances buyers have refused to make bids on tobacco offered for sale.

The crop is marketed through middlemen consisting of auction warehouses, wholesale merchants, country buyers, commission merchants, exporters, export agents, brokers and cooperative marketing associations. The Bureau of Census reports 830 of these middlemen in 1935 whose net sales aggregated $371,096,000 (Table 3). It principally through facilities of these middlemen that leaf tobacco finds its way to domestic and foreign manufacturers of tobacco products.

There are three principal methods of marketing tobacco by producers. Of these methods, the most important is marketing through

auction warehouses. Approximately 85 percent of all tobacco is bought at auction warehouses. Most of the flue-cured and Burley tobacco and a large part of the dark air-cured and fire-cured tobacco are bought at such warehouses. In the flue-cured tobacco producing States and in some other States, auction at warehouses constitutes about the only extensive method of marketing available at the present time. A few sales are made to dealers outside the auction warehouses. Large quantities of tobacco have been marketed in prior years through cooperative associations of producers.

When tobacco is sold over an auction warehouse floor the warehouse operator calculates the gross sales value of the lot of tobacco sold by the producer. From this gross value is deducted a fee for handling and selling the tobacco. The producer is paid the net proceeds from the sale by the warehouseman who later collects the gross value of the tobacco from the purchaser.

A second method of marketing is through consignment to a broker or cooperative association. This method is employed in connection with the marketing of Maryland tobacco. This tobacco, packed in hogsheads by the producers, is sold at a closed bid auction, with buyers making the rounds of Baltimore agencies and submitting sealed bids based on samples of each hogshead. There are a few scattered cooperative associations dealing in kinds other than Maryland tobacco, but the quantity of leaf tobacco handled in this manner is small.

The marketing of tobacco through cooperative marketing associations is available to tobacco growers in all States, including flue-cured tobacco growers in Georgia and Florida, in lieu of selling tobacco over an auction warehouse floor. The organization, financing and operation of such associations are assisted by agencies of the Federal Government. By marketing their tobacco through cooperative marketing associations, growers avoid any necessity of marketing their tobacco during the short period when auction warehouses are in operation. Before flue-cured tobacco can be stored so as to keep in a satisfatcory condition for sale at some future period, it is necessary that it be redried and packed in hogsheads. Associations which do not own their own redrying plants can have the tobacco of their members redried in private plants. After the tobacco has been redried and packed it can be stored for an indefinite period. During the marketing season in 1938 there were no such cooperative associations in North Florida and South Georgia.

The remainder of the crop consisting chiefly of cigar-leaf tobacco, is bought at the farm, sold through cooperative associations or in a manner somewhat similar to that followed in the case of Maryland tobacco. In some instances, contracts are entered into during the growing season between producer and buyer, or sales are negotiated after the tobacco is harvested.

Neither in the flue-cured tobacco farming industry nor in the operation of tobacco warehouses through which such tobacco is marketed,

have there been any labor disputes, or any danger or any hint of labor disputes, threatening the free flow of such tobacco in interstate or foreign commerce.

TABLE 3.—*Middleman in Leaf Tobacco, United States, 1935*

Type of Operation	Number of Establishments [1]	Net Sales (Thousands of Dollars)	Active Proprietors and Firm Members	Employees (Full-time and part-time) Average For Year
Wholesale Merchants	162	46,622	94	3,956
Exporters	43	21,207	28	2,026
Auction Companies	303	181,348	346	3,970
Brokers	12	670	11	6
Commission Merchants	34	13,152	33	363
Export Agents	17	34,237	4	1,706
Imports Agents	(2)	(2)	(2)	(2)
Country Buyers	241	71,391	121	4,005
Cooperative Marketing Associations	18	2,469	----------	120
U. S. total	830	371,096	637	16,152

[1] Number of establishments based on ownership.
[2] Not separated according to specified farm commodities handled.
Compiled from reports of the Bureau of the Census, United States Department of Commerce.

XV

Auction Marketing

There are numerous auction warehouses throughout the tobacco producing States. Many of them are connected in some capacity with others. Many of the warehouse operators are members of an association of warehousemen. Some warehouse owners operate in more than one State at the same time or at successive times as the marketing season advances. In 1935 the aggregate net sales in tobacco warehouses amounted to $181,348,000 (Table 3). During the 1937–38 marketing season the number of such warehouses having sales of flue-cured tobacco were as follows: Florida, 6; Georgia, 57; South Carolina, 36; North Carolina, 167; and Virginia, 34; making a total of 300. During the 1937–38 marketing season, producer sales of flue-cured tobacco through such warehouses were as follows: Florida, 4,869,000 pounds; Georgia, 83,243,000 pounds; in South Carolina, 101,352,000 pounds; in North Carolina, 572,499,000 pounds; and Virginia, 92,850,000 pounds; making a total of 854,813,000 pounds. The average annual producer sales of flue-cured tobacco through such warehousemen for the five-year period 1932–36 were 631,321,800 pounds (Table 5).

Substantial quantities of flue-cured tobacco are marketed by producers in one State through warehouses in other States. In 1937 the production in Alabama is estimated to be 118,000 pounds, with no producer sales within that State; the production in Florida was 4,112,000 pounds, with producer sales therein of only 4,869,000 pounds; the production in Georgia was 73,935,000 pounds, with pro-

ducer sales therein of 83,243,000 pounds; the production in South Carolina was 108,080,000 pounds, with producer sales therein of 101,352,000 pounds; the production in North Carolina was 586,755,000 pounds, with producer sales therein of 572,499,000 pounds; and the production in Virginia was 72,000,000 pounds, with producer sales therein of 92,850,000 pounds (Table 4). Substantially the same situation obtained in 1936 and previous years. A tabulation from records of the Agricultural Adjustment Administration of a portion of the sales in 1935 on certain flue-cured tobacco markets revealed that there were marketed through warehousemen located in Georgia 3,046,472 pounds produced in Florida and 276,564 pounds produced in South Carolina; through South Carolina warehousemen 919,177 pounds produced in North Carolina; through North Carolina warehousemen 3,953,053 pounds produced in Virginia and 6,101,230 pounds produced in South Carolina; and through Virginia warehousemen 32,099,811 pounds produced in North Carolina (Table 6).

TABLE 4.—*Tobacco, Flue-cured: Producers' Sales, Production, and Sales as Percentage of Production, by Types by States for the 1936 and 1937 Crops*

TYPE OF TOBACCO AND STATE	1936 CROP			1937 CROP		
	Producers Sales Within State [1]	Production Within State [2]	Sales within State as percentage of production within State	Producers Sales Within State [1]	Production Within State [2]	Sales within State as percentage of production within State
	1,000 Pounds	*1,000 Pounds*	*Percent*	*1,000 Pounds*	*1,000 Pounds*	*Percent*
Type 14:						
Florida	[3] 3,125	7,200	43.4	[4] 4,869	14,112	34.5
Georgia	86,565	82,450	105.0	83,253	73,935	112.6
Total, Type 14	89,690	89,650	100.0	88,112	88,047	100.1
Type 13:						
South Carolina	69,841	73,350	95.2	101,352	108,080	93.8
North Carolina	63,488	51,545	123.2	89,696	71,905	124.7
Total, Type 13	133,329	124,895	106.8	191,048	179,985	106.1
Type 12:						
North Carolina	212,428	222,680	95.4	290,032	303,250	95.6
Type 11:						
North Carolina	158,876	177,750	89.4	192,771	209,600	92.0
Virginia	88,423	67,875	130.3	92,850	72,000	129.0
Total, Type 11	247,299	245,625	100.7	285,621	281,600	101.4
Total, North Carolina	434,792	451,975	96.2	572,499	586,755	97.6
Total, United States	682,746	682,850	100.0	854,813	854,882	100.0

[1] Compiled from reports published by the State Department of Agriculture for the State of Georgia, South Carolina, North Carolina, and Virginia.
[2] Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.
[3] Unofficial estimate.
[4] Compiled from reports of the Live Oak, Florida Tobacco Board of Trade.

TABLE 5.—*Tobacco, Flue-cured: Average Producers' Sales, Estimated Average Quantity Used in Domestic Manufacture, and Estimated Average Minimum Quantity to Interstate and Foreign Commerce Before Manufacture for Specified States for the 5 Years, 1932 to 1936*

State	Average Producers' Sales for the 5 years, 1932 to 1936 [1]	Estimated Average Quantity Used in Domestic Manufacture for the 5 Years, 1932 to 1936 [2]	Estimated Average Minimum Quantity to Interstate and Foreign Commerce Before Manufacture (Col. 2–Col. 3)
(1)	(2)	(3)	(4)
	1,000 pounds	*1,000 pounds*	*1,000 pounds*
Virginia	77,541.4	60,279.2	17,262.2
North Carolina	433,951.4	159,453.4	274,518.0
South Carolina:	65,061.2	2.4	65,058.8
Georgia	52,807.8	.2	52,807.6
Florida	[3] 1,960.0	.4	1,959.6
All others	----------	61,826.1	----------
Total United States	631,321.8	281,541.7	411,606.2

[1] Compiled from reports of the State Department of Agriculture for the States of Virginia, North Carolina, South Carolina, and Georgia.
[2] Estimates computed from data compiled by the Bureau of Internal Revenue, United States Treasury Department.
[3] Unofficial estimate.

TABLE 6.—*Tobacco, Flue-cured: Producers' Sales on Specified Auction Markets after Movement Across State Lines, 1935 Crops*

Place of Sale	State in which grown				
	Virginia	North Carolina	South Carolina	Florida	Total
Virginia:	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Clarksville	----------	703,874	----------	----------	----------
Danville	----------	24,453,680	----------	----------	----------
Martinsville	----------	2,632,409	----------	----------	----------
South Boston	----------	4,309,848	----------	----------	----------
Total	----------	32,099,811	----------	----------	32,099,811
North Carolina:					
Henderson	844,948	----------	----------	----------	----------
Madison	102,524	----------	----------	----------	----------
Mt. Airy	477,560	----------	----------	----------	----------
Oxford	2,141,394	----------	----------	----------	----------
Reidsville	38,722	----------	----------	----------	----------
Roxboro	23,272	----------	----------	----------	----------
Stoneville	209,712	----------	----------	----------	----------
Warrenton	114,921	----------	----------	----------	----------
Fair Bluff	----------	----------	922,629	----------	----------
Fairmont	----------	----------	4,340,715	----------	----------
Tabor	----------	----------	746,886	----------	----------
Total	3,953,053	----------	6,010,230	----------	9,963,283
South Carolina:					
Dillon	----------	37,682	----------	----------	----------
Loris	----------	83,686	----------	----------	----------
Mullins	----------	797,809	----------	----------	----------
Total	----------	919,177	----------	----------	919,177
Georgia:					
Adel	----------	----------	----------	28,596	----------
Hahira	----------	----------	----------	135,596	----------
Moultrie	----------	----------	----------	170,383	----------
Nashville	----------	----------	----------	143,171	----------
Pelham	----------	----------	----------	52,428	----------
Statesboro	----------	----------	276,564	----------	----------
Tifton	----------	----------	----------	61,665	----------
Valdosta	----------	----------	----------	2,454,633	----------
Total	----------	----------	276,564	3,046,472	3,323,036
Grand total	3,953,053	33,018,988	6,286,794	3,046,472	46,305,307

Compiled from records of the Agricultural Adjustment Administration, United States Department of Agriculture.

Producers, after curing their tobacco, sort it into lots on the basis of quality and color, and tie it into small bundles or "hands" of ten to twenty leaves. In Florida and Georgia, however, the leaves are not tied into "hands" but are marketed loose. The producers also grade the tobacco as best they can. Tobacco is then delivered by the producers to the warehouse in motor trucks, wagons, or trailers pulled by family automobiles. After unloading at the warehouse, the bundles or "hands" of tobacco are placed in trays, and weighed under the supervision of the warehouse employees. A ticket is placed on each pile of tobacco giving the name of the owner, the number of pounds of tobacco in the tray, and spaces for the name of the buyer and the price paid. The trays are then arranged by employees of the warehouseman in rows with a passageway between the rows. No distinction is made between tobacco produced in the State and tobacco produced in any other State; nor is the ultimate destination of the leaf known until after sale. The auctioneer who conducts the sale, the warehouseman and his employees walk in the passageway on one side of the row of tobacco trays and the buyers walk in the passageway on the other side of the row. Following the auctioneer on his side of the trays, are the calculators or "bookmen" whose duty it is to make immediate calculation of the total price a tray of tobacco brings, the amount due the warehouseman, the amount due the growers, and also make certain records for the warehouse office. Once the selling has started, it proceeds with great rapidity. Lots of tobacco are sold at auction as rapidly as 360 lots an hour or at the rate of a tray every ten seconds. The auction is in constant motion, the auctioneers proceeding along one side of the row, the buyers following along the other. The rapid rate at which the auctioneer intones the bids and offers the tobacco is such that his words constitute a jargon that cannot be understood except by one familiar with the auction sales system of selling tobacco. It is customary for the warehouseman to make the opening bid. The method used by the buyers in bidding is unusual in that the bid is usually made by a motion of the head, a movement of the hand, a wink of the eye, or some other gesture known only to the auctioneer and bidder. As soon as the sale is made, a ticket marker places the name of the buyer, the price, and the buyer's grade on the warehouse ticket. The calculators, who are usually some 25 to 30 trays behind the sale, complete the calculation as described above. The tobacco is removed by the buyer from the warehouse floor unless the producer-seller rejects the offer by "tucking the ticket." This is accomplished by the seller folding the ticket on the tobacco and laying it back on the tray. This must be done within a few minutes after the sale and can only be done by a producer present at the sale. In such event, the producer may subsequently re-offer his tobacco, or remove it and offer it for sale at another tobacco warehouse, or take it back to his farm to be offered for sale at a later date. Lots which have been bought in by "the house," that is, by the warehouseman, are not removed from the warehouse floor. Such lots are usually dressed up and

ut back in line for resale. In order to accommodate the stream of eliveries, the tobacco must be removed from the warehouse floor as apidly as sold to make way for new lots for the following day's usiness. The removal is made by the buyer's employees who com-ingle the tobacco with other tobacco purchased by the buyer on the ame day. Such tobacco is moved by truckers to redrying plants or o packing houses for wrapping in burlap sheets for shipment to e-driers.

The marketing season for flue-cured tobacco usually begins on or bout the first day of August and extends throughout the greater art of February of the following year. The markets in Florida nd Georgia open first. They continue for a period of from three o six weeks. The markets in South Carolina and southern North Carolina open about the middle of August and continue through October, with the bulk of sales occurring prior to October first. The narkets for type 12 in North Carolina open about September first nd continue through January of the next year. For type 11, the narkets in North Carolina and Virginia open, as a rule, in the second r third week of September and continue through February of the ext year. The peak of sales is sometime in October or November nd the greatest movement from producers to dealers and manu-acturers occurs between October first and January first.

The selling season is fixed mainly by the buyers and the ware-ousemen. At times growers rush tobacco to the market to such n extent that warehousing capacity is overtaxed and the tobacco annot be placed on sale or auctioned for several days. Since auction arehouses collect commissions or fees on the tobacco sold over their oor, each warehouseman is quite active in trying to obtain the atronage of producers for his own particular warehouse.

XVI

Principal Buyers

The manufacturers and dealers, through their representatives, bid pon tobacco offered for sale by producers. The manufacturers and ealers are few in number, and since they have essential informa-on as to the supply of, and demand for, tobacco, the competition mong their representatives is limited by instructions as to average rices which can be paid for the various grades of tobacco and the uantity desired. The principal manufacturers are:

The American Tobacco Company, with factories in Kentucky, New ork, North Carolina, Ohio, Tennessee, Virginia, and Wisconsin;

Liggett and Myers Tobacco Company, with factories in California, linois, Missouri, North Carolina, Pennsylvania, and Virginia; and

The R. J. Reynolds Tobacco Company, Winston-Salem, North arolina.

The principal dealers are:

The Imperial Tobacco Company, an English company with merican headquarters in Richmond, Virginia, which buys tobacco clusively for shipment to the United Kingdom;

The Universal Leaf Tobacco Company, Richmond, Virginia, c
prising a group of twenty-three subsidiaries, engaged in the buy
and selling of leaf tobacco in the United States, Canada, China,
Dominican Republic, with agencies in Europe, Asia, Africa, So
America, Australia, and Canada.

The Export Leaf Tobacco Company, a subsidiary of the Brit
American Tobacco Company, Ltd., London, England, which is
gaged in buying tobacco for exportation to foreign countries and
buying tobacco for the Brown-Williamson Tobacco Company, Lo
ville, Kentucky, a like subsidiary, engaged in the manufacture
tobacco products.

Dibrell Brothers, Inc., Danville, Virginia (with foreign office
Manila, P. I.; Shanghai, China; Antwerp, Belgium; and Lond
England), which, with approximately thirteen subsidiaries loc
in Georgia, Kentucky, North Carolina, Tennessee, and Virginia, b
tobacco in the United States for sale therein and in foreign countr

In addition to these manufacturers and dealers, there are o
independent dealers in leaf tobacco and also a large number
speculators who have no established places of business but m
small purchases of tobacco on the auction markets either for imm
ate resale on the same market or for transfer to some other ma
for sale. It is estimated that in 1934, 13 principal tobacco ma
facturers purchased the equivalent of 64 percent of the crop, and
three largest of such manufacturers purchased a quantity equa
46.2 percent of the crop. These same 13 corporations sold over
percent of the cigarettes, over 90 percent of the smoking tobacco,
75 percent of the chewing tobacco, and over 98 percent of the s
produced in the United States in 1934. The three companies rep
ing, respectively, the largest sales of cigarettes, of smoking toba
of chewing tobacco, and of snuff, accounted for 80.1 percent, 64.8
cent, 68.7 percent, and 95.3 percent, respectively, of the 1934 pro
tion of these products.

XVII

Redrying and Storage

Most leaf tobacco is redried and stored before manufacture. W
flue-cured tobacco is delivered at the warehouse for sale by the
ducers, it usually has a moisture content of from 20 to 25 perc
This moisture content tends to prevent breakage in handling. F
the warehouses the tobacco is moved promptly to redrying pla
If facilities for redrying are not available in the vicinity of
each lot of tobacco purchased is wrapped by the buyer in a bu
sack, or "sheet". The sheets of tobacco are then shipped by
or truck to the redrying plant of the buyer or his principal. At
redrying plant the tobacco is assorted and blended according
grade and run through a redrying machine. In redrying, pr
cally all of the original moisture is removed and a controlled amo
is added to condition the tobacco for packing in hogsheads.
degree of moisture content is varied according to the intended

position of the tobacco. The moisture content of tobacco intended for export is lower than that intended for storage for domestic manufacture. Tobacco packed for export usually contains about 11 percent of moisture, while that packed for domestic trade usually contains from 12 to 14 percent of moisture. However, export moisture content is varied somewhat in accordance with import regulations and practices of different foreign countries. For export to the United Kingdom, the tobacco is packed with a moisture content below that for other countries. The stem is removed from some flue-cured tobacco prior to redrying and packing but most of it is packed in leaf form and the stem is removed at a later date. Of the tobacco exported to foreign countries, only a small percentage is stemmed prior to export.

The redrying of flue-cured tobacco by a buyer usually takes place within a week after purchase from the producer. Redrying plants are owned and operated by most of the dealers and manufacturers. The manufacturing plants, the points of export, and the center of supply are the three principal points of concentration for redrying plants. There are no redrying plants within the States of Alabama and Florida. The flue-cured tobacco sold through the warehouses of Florida is sent by rail or truck to other States for redrying, among which States are Georgia, Kentucky, North Carolina, and Virginia. At the present time there are four or five redrying plants in the State of Georgia with a season capacity for redrying of approximately twenty million pounds of tobacco when operated at 24-hour day capacity. A portion of the market supply produced in Florida is redried in Georgia. The redrying plants are largely owned and operated by exporters. Approximately fifteen million pounds of flue-cured tobacco is redried in Georgia each year, and of this quantity approximately seven million pounds is exported. About eighty percent of the market supply of flue-cured tobacco produced in Georgia is sent out of the State for redrying. Among the States to which such tobacco is sent for redrying are North Carolina, Virginia, and Kentucky. The fifty-seven auction warehouses in Georgia are located in sixteen cities. Redrying plants are located in only three of such cities, namely, Valdosta, Tifton, and Douglas, and a substantial part of the flue-cured tobacco sold through the warehouses in these three cities is sent to other States for redrying.

The tobacco for export trade is packed in hogsheads of a size different from the hogsheads in which tobacco is packed for domestic manufacture. It may not be readily diverted into domestic manufacture. The storage following redrying is for the purpose of aging in preparation for manufacture. The tobacco in storage ferments or sweats. There are thereby eliminated certain acrid characteristics of the tobacco. Most of the leaf is aged from one to five years. The length of time during which the tobacco remains in storage depends entirely upon the manufacturer's needs and upon the nature and characteristics of the supply produced in any one year. The hogsheads of tobacco moving in the domestic trade are usually stored in

the vicinity of the manufacturing plants of the owners of the tobac
Exporters of flue-cured tobacco do not store their tobacco for a
considerable length of time. Foreign manufacturers have their o
storage facilities for aging the leaf. The exporters maintain a sm
reserve supply only sufficient to meet changes in the usual foreign d
mand. The seasonal movements of flue-cured tobacco into expo
trade are similar to those of the auction marketing. Exports are
their peak from September through January. Any storage of tobac
for export takes place near the approximate export center.

XVIII

Exports, Manufacture, and Consumption

On an average, 65 percent of the leaf tobacco produced in th
United States is made into tobacco products in the United State
and 35 percent is exported for foreign manufacture. In the domesti
manufacture, 30 percent of the supply is made into cigarettes; 2
percent is used for making smoking and chewing tobacco and snuff
and 11 percent is made into cigars. Flue-cured tobacco constitute
the most important class of tobacco. The average percentage o
each class of tobacco exported during the five-year period, 1932-193
is as follows: flue-cured, 55 percent; Burley, 4 percent; Maryland
34 percent; dark-air-cured, 30 percent; fire-cured, 66 percent; and
cigar leaf, less than one percent. In 1935, 755,546,000 pounds, proc
essing weight, of leaf tobacco were manufactured in the United
States and of this quantity 342,727,000 pounds were manufactured
into chewing and smoking tobacco and snuff; 97,655,000 pounds into
cigars; and 315,164,000 pounds into cigarettes (Table 7).

The fabrication of tobacco products involves an assembly of
numerous kinds of tobacco from dispersed producing areas. Tobacco
products are usually blends of several kinds of leaf tobacco. Cig-
arettes are a blend of flue-cured tobacco which is produced in Ala-
bama, Florida, Georgia, North Carolina, South Carolina, and Vir-
ginia; Maryland tobacco; Burley Tobacco, which is produced mainly in
Kentucky, Tennessee, Indiana, Kansas, Missouri, North Carolina,
Ohio, Virginia, and West Virginia; and imported tobacco, commonly
referred to as Turkish or Oriental, produced in several countries in
southeastern Europe. The tobacco contents of the typical American
cigarette are approximately 52 percent flue-cured, 33 percent Burley,
3 percent Maryland, and 12 percent Oriental. The total American
output of chewing and smoking tobacco and snuff has the following
approximate average leaf components if all of the products are
grouped together: flue-cured tobacco, 22 percent; Burley tobacco 4
percent; cigar-leaf tobacco, which is produced mainly in Connecticut,
Florida, Georgia, Massachusetts, Minnesota, New York, Ohio, Penn-
sylvania, and Wisconsin, 15 percent; fire-cured tobacco, which is pro-
duced in Kentucky, Tennessee, and Virginia, 12 percent; dark air-
cured tobacco, similarly produced, 8 percent; and Maryland tobacco,
1 percent. Cigars in the aggregate contain about 35 percent im-

orted leaf tobacco; any one brand may contain all domestic leaf r a combination of both foreign and domestic leaf.

Approximately two-thirds of the amount of flue-cured tobacco leaf old at auction moves to points in States other than the State of sale or manufacture.[1] The average annual sales at auction warehouses y producers in the six flue-cured tobacco producing States during the ve-year period, 1932–1936, was 631,321,800 pounds. The average nnual quantity manufactured in these six States during such period s estimated to be 219,715,000 pounds (Table 5). There was manufac-ured in the United States outside of these six States an estimated uantity of 61,326,100 pounds of flue-cured tobacco as follows: Ken-ucky, 30,195,300 pounds; Pennsylvania, 3,598,000 pounds; New Jersey, ,779,000 pounds; California, 8,307,000 pounds; all other States, ,946,800 pounds. The average annual quantity exported to foreign ountries during such period was 345,690,100 pounds. Florida, eorgia, and South Carolina, with average sales of 1,960,000 pounds, 2,807,800 pounds, and 65,061,200 pounds, respectively, manufactured n the average, only 400 pounds, 200 pounds, and 2,400 pounds, respec-vely. North Carolina, with average producers' sales of 433,951,400 ounds, manufactured 159,433,400 pounds. Virginia, with average roducers' sales of 77,541,400 pounds, manufactured 60,279,200 pounds Table 5). The 1932–1938 average annual export of 345,690,100 ounds took place through customs districts, not only in Alabama, lorida, Georgia, South Carolina, North Carolina, and Virginia, the ly States producing flue-cured tobacco, but also in the customs dis-cts of Vermont, St. Lawrence, Buffalo, New York, Maryland, New leans, Galveston, San Antonio, Arizona, Los Angeles, San Francisco, ashington, Dakota, Duluth and Superior, and Michigan. The rgest quantity exported from any customs district was 298,698,400 unds from the Virginia district, while in the State of Virginia pro-cers' sales during such period averaged 77,541,400 pounds. Average nual producers' sales in Florida, Georgia, North Carolina, and South rolina were 1,960,000 pounds, 52,807,800 pounds, 433,951,400 pounds, d 65,061,200 pounds, respectively, while the exports from the respec-e customs districts of such States were 10,300 pounds, 8,219,800 unds, 22,889,500 pounds, and 3,776,500 pounds, respectively able 8).

For the same period a substantially similar situation existed with pect to Burley tobacco. The average annual production of such acco was 274,798,000 pounds, while the quantity manufactured in United States was 278,894,600 pounds. California, New York, nnsylvania, and some other States, with no production therein, nufactured an estimated average annual total of 27,166,000 pounds Burley. The average farm production in Indiana, Kentucky, Ten-see, and West Virginia, during this period, was 6,656,000 pounds,

[1] This estimate is a minimum, because, actually, the manufacturing plants in Virginia, th Carolina, and the other States use tobacco purchased over the entire flue-cured cco belt.

191,806,000 pounds, 44,858,000 pounds, and 2,310,000 pounds, respectively, while the 1932–1936 average manufacture in such States is estimated to be 86,700 pounds, 32,952,900 pounds, 948,500 pounds and 92,900 pounds, respectively. North Carolina, Missouri, and Virginia, annually producing, on the average, only 5,399,000 pounds, 4,822,000 pounds and 8,540,000 pounds, respectively, annually manufactured, on the average, 132,165,100 pounds, 18,492,100 pounds, and 54,766,200 pounds, respectively. It is estimated, as a minimum, that 77 percent of the Burley leaf enters interstate and foreign commerce. (Table 9.) A preponderant quantity of the kinds of tobacco other than flue-cured and Burley also moves in interstate and foreign commerce. Commerce in fire-cured and dark-air-cured tobacco is similar to commerce in flue-cured and Burley tobacco. In 1935, 272,000 pounds of tobacco were manufactured in Maryland while 27,935,000 pounds were produced in the State. A comparison of cigar-leaf tobacco similar to that shown for flue-cured and Burley tobacco indicates that less than one-third of the total production of cigar-leaf tobacco is manufactured in the States in which the tobacco is produced. From two-thirds to three-fourths of all tobacco manufactured in the United States is purchased on markets in States other than States in which manufacturing occurs.

TABLE 7.—*Leaf Tobacco Used in the Manufacture of Tobacco Products in the United States, 1935*

(Processing weight)

State in which Manufactured	Chewing and Smoking Tobacco and Snuff	Cigars	Cigarettes	Total All Tobacco Products	Percent of U. S. Total
	1,000 Pounds	*1,000 Pounds*	*1,000 Pounds*	*1,000 Pounds*	*1,000 Pounds*
Alabama		17		17	(1)
Arizona					
Arkansas		8		8	(1)
California	192	1,148	7,963	9,303	1.23
Colorado	6	27		33	(1)
Connecticut	41	738		779	0.10
Delaware	2,142	5		2,147	0.28
Florida	3	12,920	1	12,924	1.71
Georgia	2	225		227	(1)
Idaho		3		3	(1)
Illinois	26,948	806		27,754	3.67
Indiana	168	1,754		1,922	0.25
Iowa	167	104		271	(1)
Kansas	2	6		8	(1)
Kentucky	36,621	128	26,777	63,526	8.41
Louisiana		1,289		1,289	0.17
Maine		48		48	(1)
Maryland		272		272	(1)
Massachusetts	336	946	25	1,307	0.17
Michigan	8,375	4,886	15	13,276	1.76
Minnesota	57	279		336	(1)
Mississippi					
Missouri	35,223	560	32	35,815	4.74
Montana	1	6		7	(1)
Nebraska	24	23		47	(1)
Nevada		2		2	(1)
New Hampshire	1	1,217		1,218	0.16
New Jersey	7,658	10,439	12,052	30,149	3.99
New Mexico					
New York	2,163	5,243	194	7,600	1.01
North Carolina	118,317	629	169,137	288,083	38.13
North Dakota		1		1	(1)

[1] Less than 1/10 of one percent.

TABLE 7.—*Leaf Tobacco Used in the Manufacture of Tobacco Products in the United States, 1935*—Continued

State in which Manufactured	Chewing and Smoking Tobacco and Snuff	Cigars	Cigarettes	Total All Tobacco Products	Percent of U. S. Total
	1,000 Pounds	*1,000 Pounds*	*1,000 Pounds*	*1,000 Pounds*	*1,000 Pounds*
Ohio	47,650	4,554		52,204	6.91
Oklahoma		1		1	(1)
Oregon	2	11		13	(1)
Pennsylvania	5,711	37,605	5,041	48,357	6.40
Rhode Island	6	158		164	(1)
South Carolina	15	3,706		3,721	0.49
South Dakota	1	7		8	(1)
Tennessee	17,813	85		17,898	2.37
Texas	55	289		344	(1)
Utah	1	17		18	(1)
Vermont		1		1	(1)
Virginia	25,515	5,929	93,927	124,471	16.47
Washington	1	8		9	(1)
West Virginia	7,353	1,878		9,231	1.22
Wisconsin	157	577		734	0.10
Wyoming					
United States	342,727	97,655	315,164	755,546	100.00

[1] Less than 1/10 of one percent.

Compiled from the Annual Report of the Commissioner of Internal Revenue, Fiscal Year Ended June 30, 1936, U. S. Treasury Department.

TABLE 8.—*Tobacco, Flue-cured: Average Domestic Exports from the United States By Customs Districts and Average Producers' Sales Within Customs Districts for the 5 years, 1932–1936*

Customs District	Average Exports for the 5 years 1932 to 1936		Average Producers' Sales for the 5 years 1932 to 1936 [4]
	Reported Weight [1]	Estimated Farm Sales Weight [2]	
(1)	(2)	(3)	(4)
	1,000 pounds	*1,000 pounds*	*1,000 pounds*
Vermont	2,350.4	2.5	
St. Lawrence	3,099.3	3.2	
Buffalo	527.2	622.1	
New York	2,720.3	3,210.0	
Maryland	82.3	97.1	
Virginia	253,134.2	298,698.4	77,841.4
North Carolina	19,397.0	22,889.5	433,951.4
South Carolina	3,200.4	3,776.5	65,061.2
Georgia	6,965.9	8,219.8	52,807.8
Florida	8.7	10.3	1,960.0
Mobile	6.7	7.9	
New Orleans	46.3	54.6	
Galveston	.5	.6	
San Antonio	3.2	3.8	
Arizona	(3)		
Los Angeles	119.5	141.0	
San Francisco	384.3	453.5	
Washington	59.9	70.7	
Dakota	2.3	2.7	
Duluth and Superior	1.6	1.9	
Michigan	346.6	409.0	
Puerto Rico	(3)		
Mixed Post	(3)		
Total United States	292,957.5	345,690.1	631,321.8

[1] Compiled from reports of the Bureau of Foreign and Domestic Commerce, United States Department of Commerce.

[2] Converted to a farm sales weight by multiplying the reported weight by 1.18.

[3] Compiled from reports of the State Department of Agriculture for the States of Virginia, North Carolina, South Carolina, and Georgia.

[4] Less than 500 pounds.

TABLE 9.—*Tobacco, Burley: Average Production, Estimated Average Quantity Used in Domestic Manufacture, and Estimated Average Minimum Quantity in Interstate and Foreign Commerce Before Manufacture for Specified States for the 5 Years, 1932–1936*

State	Average Production for the 5 Years, 1932 to 1936 [1]	Estimated Average Quantity Used in Domestic Manufacture for the 5 Years, 1932 to 1936 [2]	Estimated Average Minimum Quantity in Interstate and Foreign Commerce Before Manufacture (Col. 2-Col. 3)
(1)	(2)	(3)	(4)
	1,000 pounds	*1,000 pounds*	*1,000 pounds*
Indiana	6,656.0	86.7	6,569.3
Kansas	258.0	1.3	256.7
Kentucky	191,806.0	32,952.9	158,853.1
Missouri	4,822.0	18,492.1	
North Carolina	5,399.0	132,165.1	
Ohio	10,149.0	12,222.9	
Tennessee	44,858.0	948.5	43,909.5
Virginia	8,540.0	54,766.2	
West Virginia	2,310.0	92.9	2,217.1
All others		27,166.0	
Total United States	274,798.0	278,894.6	211,805.7

[1] Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.
[2] Estimates computed from data compiled by the Bureau of Internal Revenue, United States Treasury Department.

Leaf tobacco moves extensively into interstate and foreign commerce by railway transport.

In 1937, on Class I railroads throughout the several railway regions of the United States, there originated and terminated on the same railways 355,481 tons of leaf tobacco; originated and delivered to connecting carriers 402,665 tons; received from connecting lines and terminated on line of receipt, 390,350 tons, and received from connecting lines and delivered to other connecting lines 241,324 tons. The total tons originating on Class I railroads in the United States were 758,146, and the total tons terminating on Class I railroads in the United States were 745,831. The number of Class I railroads participating in this movement was as follows: New England region, 9 railroads; Great Lakes region, 14 railroads; Central Eastern region, 15 railroads: Pocahontas region, 4 railroads; Southern region, 23 railroads; Northwestern region, 3 railroads; Central Southeastern region, 10 railroads; Southwestern region, 13 railroads (Table 10).

The facilities of the railroads and other common carriers of the United States, and particularly carriers operating in the tobacco-growing sections of the Southeast, where the bulk of the flue-cured tobacco is produced, have been for many years past, were at the time of the passage and approval of the Agricultural Adjustment Act of 1938, and now are more than ample to move such tobacco freely and without undue delay.

BLE 10.—*Leaf Tobacco, Railroad Shipments—Class I Railroads, From Interstate Commerce Commission Freight Commodity Statistics, 1937*

Region	Originating on reporting line		Received from connecting lines	
	Terminated on the line (tons)	Delivered to connecting lines (tons)	Terminated on the line (tons)	Delivered to connecting lines (tons)
w England	1,039	6,948	850	7,731
st Lakes	12,996	16,098	35,890	11,074
ntral Eastern	16,215	19,329	30,929	39,145
cahontas	49,977	42,531	103,787	26,383
uthern	268,640	302,756	213,449	152,678
rthwestern	5,988	13,428	457	235
ntral Western	597	1,403	4,803	2,114
uth Western	29	152	185	1,964
Total U. S	355,481	402,665	390,350	241,324

Total originating, tons 758,149
Total terminating, tons 745,831

NEW ENGLAND REGION

Railroad	Originating on reporting line		Received from connecting lines	
	Terminated on the line (tons)	Delivered to connecting lines (tons)	Terminated on the line (tons)	Delivered to connecting lines (tons)
ston & Maine		815	67	1,047
adian National of New England				24
ntral Vermont		1,326		2,113
adian Pacific in Vermont				67
rnational Railway Co. of Maine				1,828
ine Central				22
w York, New Haven & Hartford	1,016	4,807	783	527
ston & Albany	23			153
w York Connecting Railway				1,950
Total	1,039	6,948	850	7,731

GREAT LAKES REGION

nd Trunk Western			478	1,878
aware & Hudson			183	536
L. & W		598	2,463	541
roit & Toledo Shoreline		23		9
	49	250	415	737
gh & Hudson				1,167
gh Valley	36	582	1,639	373
Y. Ontario & Western		21	11	8
w York Central	12,040	7,026	26,747	1,468
sburgh & Lake Erie				173
Y., Chicago & St. Louis			1,121	3,325
e Marquette	871	4,754	2,105	259
sburgh & W. Va				42
ash		2,924	728	558
Total	12,996	16,098	35,890	11,074

CENTRAL EASTERN REGION

on, Canton, and Youngstown		29		
timore & Ohio	3,049	8,298	7,904	7,404
en Island Rapid Tr		18		
ago & E. Illinois			871	144
go & Ill. Midland				5,904
ago, Indianapolis & Louisville		2,208	128	576
roit, Toledo & Ironton		187	1,111	
n, Joliet & Eastern				1,070
g Island			17	
nsylvania	8,086	5,934	16,262	2,969
Reading Seashore			306	
tral R. R. of N. J	390	40	1,984	10,301
ding Co	4,059	2,601	2,272	9,353
tern Maryland	31	14	74	1,396
eling & Lake Erie				28
Total	16,215	19,329	30,929	39,145

TABLE 10.—*Leaf Tobacco, Railroad Shipments—Class I Railroads, From Interstate Commerce Commission Freight Commodity Statistics, 1937*—Continued

POCAHONTAS REGION

Railroad	Originating on reporting line		Received from connecting lines	
	Terminated on the line (tons)	Delivered to connecting lines (tons)	Terminated on the line (tons)	Delivered to connecting lines (tons)
Chesapeake & Ohio	27,542	27,008	59,119	4,70
Norfolk & Western	22,425	11,518	38,617	11,88
Richmond, Fredericksburg and Potomac		3,496	2,652	6,15
Virginian	10	529	3,399	1,61
Total	49,977	42,551	103,787	24,33

NORTHWESTERN REGION

Chicago & North Western	888	1,708	275	18
Chicago, St. Paul, Minneapolis & Omaha		22	46	
Chicago, Milwaukee, St. Paul & Pacific	5,100	11,698	136	5
Total	5,988	13,428	457	23

SOUTHERN REGION

Tennessee Central	2,019	8,457	536	63
Atlanta & West Point				10
Atlanta, Birmingham & Coast	577	8,069	247	13
Atlantic Coast Line	89,906	65,852	46,511	14,90
Charleston & W. Carolina				28
Clinchfield		2,387		7,68
Georgia				2
Louisville & Nashville	52,190	61,005	9,920	1,70
Nashville, Chattanooga and St. Louis	1,764	3,977	421	1,22
Western Ry. of Alabama				18
Georgia & Florida	1,621	16,069	776	1,95
Gulf, Mobile & Northern				95
Central of Georgia	5	1,173	1,329	2,67
Illinois Central	15,526	5,116	4,079	3,27
Mississippi Central				4
Norfolk Southern	14,042	36,126	19,449	35,14
Seaboard Air Line	6,445	12,445	14,786	16,70
Alabama Great Southern				3,56
Cincinnati, New Orleans and Texas Pacific	1,042	30,538	7,009	41,12
Ga. Southern & Fla.		2,031	251	1,97
Mobile & Ohio			149	14
N. Orleans & Northeastern		10	3,516	1,20
Southern	83,312	50,271	104,470	16,70
Total	268,649	302,756	213,449	132,67

CENTRAL WESTERN REGION

Atchison, Topeka & Santa Fe			524	26
Alton	14		25	26
Chicago, Burlington and Quincy	583	1,391	619	72
Denver and Rio Grande Western				73
Chicago, Rock Island and Gulf				12
Chicago, Rock Island and Pacific				8
Southern Pacific		12	3,036	2
Toledo, Peoria & Western				21
Union Pacific			13	7
Western Pacific			586	
Total	597	1,403	4,803	2,11

SOUTHWESTERN REGION

St. Louis—San Francisco			12	1
Kansas City Southern			10	
Kansas, Oklahoma & Gulf				20
Louisiana & Arkansas				8
Louisiana, Arkansas & Texas				26
Missouri-Kansas-Texas	20			16
Gulf Coast Lines and Subsidiaries			22	
International Great Northern		38		23
Missouri Pacific		10	101	26
Texas & Pacific				26
St. Louis Southwestern Lines			40	10
Texas & New Orleans		104		42
Texas Mexican				5
Total				1,96

According to the Census of Manufacturers, there are approximately 900 tobacco factories in the United States. In 1935 the number was approximately 890, of which 746 were cigar factories, 29 cigarette factories, and 115 chewing and smoking tobacco and snuff factories. The aggregate expenditures of these factories in that year for leaf tobacco, excise taxes, containers, fuel, electricity, etc., amounted approximately to $810,000,000 of which amount the cigarette factories accounted for 79 percent. The factories are classified by the Census according to the product of chief value, and no factory is included which has an annual output valued at less than $5,000. Cigarettes are manufactured in 11 States, cigars in 44 States, and chewing and smoking tobacco and snuff in 34 States. In 1935 there were 755,546,000 pounds, processing weight, of leaf tobacco manufactured into tobacco products in the United States, of which 342,727,000 pounds were manufactured into chewing and smoking tobacco and snuff; 97,655,000 pounds into cigars, and 315,164,000 pounds into cigarettes. While approximately one-half of the States were engaged in commercial production of leaf tobacco, manufacture took place in forty-four States. The only States in which there was no manufacture were Arizona, Mississippi, New Mexico, and Wyoming. The eight States of Illinois, Kentucky, Missouri, New Jersey, North Carolina, Pennsylvania, Tennessee, and Virginia, accounted for slightly less than 85 percent of the total domestic manufacture, and North Carolina and Virginia accounted for approximately 55 percent of the total manufacture (Table 7).

In the United States in 1935 there were manufactured 139,968,684,406 cigarettes, of which 139,966,179,916 weighed not more than three pounds per thousand, and 2,504,490 weighed more than three pounds per thousand; 4,863,191,852 cigars, of which 4,685,369,178 weighed more than three pounds per thousand; and 177,822,178 weighed not more than three pounds per thousand; and 342,727,000 pounds of chewing and smoking tobacco and snuff. Approximately 98 percent of the tobacco products manufactured in the United States are consumed domestically. Tobacco products of all kinds move extensively from factories to all parts of the United States.

Tobacco products consumed in the United States pass through wholesalers and retailers to consumers. In 1935 there were 21,410 establishments wholesaling tobacco products, consisting of full service and limited function wholesalers; manufacturers' sales branches (with stocks); manufacturers' sales offices (without stocks), and agents and brokers with reported aggregate sales amounting approximately to $1,110,333,000 (Table 11). In the same year there were 1,028,504 retail outlets for tobacco products consisting of food stores, department stores, filling stations, eating and drinking places, drug stores, and other retail stores (Table 12).

TABLE 11.—*Wholesale Trade in Manufactured Tobacco Products in the United States, 1935*

Type of Operation and Kind of Business or Trade Group	Establishments	Reported Sales of "Cigars, Cigarettes, and Other Tobacco Products"
Full Service and Limited Function Wholesalers:	*Number*	*1,000 Dollars*
Beer, wines and liquors	5,177	4,95
Drugs (full line)	201	1,87
Drugs & Sundries (Specialty lines)	1,169	27
General merchandise	135	1,99
Groceries (full line)	1,786	65,22
Groceries and foods	10,726	11,57
Tobacco Products	2,022	367,67
Manufacturers' Sales Branches (With Stocks):		
Tobacco products	65	604,17
Manufacturers' Sales Offices (Without Stocks):		
Tobacco products	121	200,03
Agents and Brokers:		
Tobacco Products	8	1,33
U. S. Total	21,410	1,116,33

Compiled from Reports of the Bureau of Census, United States Department of Commerce.

TABLE 12.—*Retail Outlets for Tobacco Products in the United States, 1935*

Kind of Business	Number of Stores
Food Stores:	
Candy and confectionery stores	53,13
Delicatessen stores	6,55
Grocery stores	354,97
Other food stores	6,96
General stores (with food)	66,71
Department Stores	6,33
Filling Stations	197,56
Eating & Drinking Places:	
Restaurants, cafeterias, lunchrooms	113,02
Lunch counters, refreshment stands	40,42
Drinking places	98,06
Drug Stores:	
Drug stores with fountains	58,72
Drug stores without fountains	17,96
Other Retail Stores:	
Cigar stores and cigar stands	13,35
Hay, grain, & feed stores (with groceries)	79
Beer and liquor stores (packaged)	12,16
U. S. total	1,028,50

Compiled from reports of the Bureau of Census, United States Department of Commerce.

XIX

Commerce and Price

The price of flue-cured tobacco is a very essential element in the marketing of the leaf, and the factors influencing price are world-wide in scope.

The demand for flue-cured tobacco is as widespread as the consumers of those tobacco products having flue-cured leaf as a component part. The marketings of flue-cured tobacco plus the stocks on hand

constitute the supply. Both the demand and the supply of flue-cured leaf are national and international in scope.

When buyers of flue-cured tobacco assemble in any particular warehouse, the price bid is one that has been carefully considered by the buyers on the basis of the best information relative to the demand and supply of flue-cured leaf. Local factors such as quality, distance to points of manufacture or export, and arrangement of the leaf for marketing account for the small price differentials in the various flue-cured markets, but the predominant forces affecting the price in each warehouse are world supply and world demand of flue-cured leaf.

During the marketing season for flue-cured tobacco in 1933, there arose grower protests in respect to auction market prices for such tobacco. These prices were at an extremely low level. The protests first arose in Georgia and then spread to South Carolina and North Carolina. Appeals were made to the Agricultural Adjustment Administration for relief. Mass meetings of growers were held throughout the flue-cured tobacco belt and, pending some action by the Federal Government, the auction markets in South Carolina and North Carolina were closed by official action of the respective Governors of these two States, The marketing in Georgia had been completed and selling in Virginia had not yet commenced, so that the flue-cured tobacco industry was at a complete standstill. Conferences were held among the growers, the buyers, and officials of the Agricultural Adjustment Administration in Washington, D. C., and elsewhere. There was an insistent demand that immediate action be taken by the Federal Government to save the remainder of the 1933 flue-cured tobacco crop from being sacrificed at the prices prevailing at the time of the closing of the markets. As a result, a marketing agreement was entered into between the principal buyers of flue-cured tobacco and the Secretary of Agriculture pursuant to the provisions of Section 8 (2) of the Agricultural Adjustment Act of 1933, and this agreement had a salutory effect upon the prices subsequently received by the growers for the remainder of the 1933 crop of flue-cured tobacco.

XX

General Economic Aspects of Tobacco Industry

Consumption of tobacco is relatively stable. The marketing of tobacco by farmers fluctuates widely from season to season. The supply and price of tobacco vary inversely (as the supply increases the price decreases, and vice versa). The price for tobacco marketed in any year affects the marketings of tobacco in succeeding years. As the prices are lower in any year marketings in succeeding years usually are lower, and vice versa. Farm prices are a small portion of the cost of manufactured tobacco products in the United States and of the

tobacco exported to foreign countries. Excise taxes in the United States and import duties and taxes on tobacco exported to foreign countries, together with relatively fixed manufacturing costs make up the larger part of the cost of tobacco products. There is little, if any, relationship between the prices received by farmers for their leaf tobacco and the price paid by the consumer for manufactured tobacco products.

Each farmer offers his tobacco for sale in competition with other farmers who produce the same class of tobacco. Having inadequate knowledge of demand by manufacturers and exporters of tobacco, and being unable to use such knowledge if it were possessed by them, farmers are in no position to plan and adjust their marketings of tobacco in line with demand.

The marketing of an amount of leaf tobacco sufficient to maintain a balance between the supply and consumption thereof has been accompanied by prices to growers that were relatively favorable. Marketings which have resulted in an accumulation of excess stocks have been accompanied by relatively low prices to growers.

XXI

Importance of Flue-Cured Tobacco Industry

Of the estimated 750,000 farm families engaged in the production of tobacco in the United States in 1937, about 300,000 were engaged in the production of flue-cured tobacco. These 300,000 families took part in the production of tobacco on about 166,000 farms in 1937. The number of flue-cured tobacco farms increased to about 190,000 in 1938, and with this increase in the number of farms there was also an increase in the number of families engaged in the production of flue-cured tobacco.

Flue-cured tobacco is by far the most important class of tobacco grown in the United States. In 1937 flue-cured tobacco represented 55 percent of the total tobacco marketed by producers and 61 percent of the farm value of all tobacco marketed by producers in the United States.

XXII

Supplies

A normal supply of flue-cured tobacco is equal to the sum of the following two items: (1) 275 percent of a normal year's domestic consumption and (2) 165 percent of a normal year's exports. The reserve supply level as defined in the act is 105 percent of the normal supply. Comparison of the actual supply with this reserve supply level gives a basis for analysis of the effect of variations in supply from the reserve supply level (Table 13).

During nine of the eighteen years 1920 to 1937 the actual supply was less than, or not more than 4 percent in excess of, the computed reserve supply level. During the other nine years the actual supply was more than 4 percent in excess of the computed reserve supply level. The average of the seasonal price for the nine years first mentioned was 19 percent higher than the average of seasonal prices for the other nine years (Table 13 (a)). The highest prices were obtained in years when the actual supply was less than the computed reserve supply level, as in 1922, when the actual supply was five percent less than the reserve supply level and the price was 27.2 cents per pound. In years when the actual supply was more than 4 percent in excess of the computed reserve supply level prices were low, as in 1930, when the actual supply was 12 percent above the computed reserve supply level and the price was 12 cents per pound, and in 1931, when the actual supply was 16 percent above the computed reserve supply level and the price was 8.4 cents per pound (Table 13 (a)).

From 1920 to 1926 incl. the supply fluctuated slightly above and below the computed reserve supply level. The actual supply which was available from 1927 to 1931 incl. was in excess of the computed reserve supply level. The excess was 89,000,000 pounds in 1927, 101,000,000 pounds in 1928, 82,000,000 pounds in 1929, 164,000,000 pounds in 1930, and 198,000,000 pounds in 1931 (Table 13 (a), Chart I).

In 1930, 1931, and 1932 large quantities of tobacco which ordinarily would have been purchased readily could not be sold by farmers at any price. Tobacco was offered for sale with no bid whatsoever or with a bid so low that it meant practically no return to the farmer. Many farmers retained on the farm tobacco which ordinarily would have been marketed. This tobacco was generally scattered over the land for its fertilizer value. A survey conducted in Virginia indicated that growers of flue-cured tobacco and fire-cured tobacco were unable to market from 8 to 15 percent of their 1931 and 1932 crops. A similar situation existed in the marketing of the 1932 Burley tobacco crop.

TABLE 13.—*Flue-cured Tobacco: Actual Supply and Reserve Supply Level, 1920–1937*

Year	Actual supply	Reserve supply level	Actual supply as percentage of reserve supply	Year	Actual supply	Reserve supply level	Actual supply as percentage of reserve supply
	(*Million pounds*)	(*Million pounds*)	(*Percent*)		(*Million pounds*)	(*Million pounds*)	(*Percent*)
1920	969	910	106	1931	1,464	1,266	115
1921	917	883	104	1932	1,241	1,286	97
1922	929	979	95	1933	1,409	1,387	102
1923	1,088	1,008	108	1934	1,320	1,347	98
1924	983	974	101	1935	1,564	1,469	106
1925	1,102	1,108	99	1936	1,554	1,497	104
1926	1,084	1,102	98	1937	1,738	1,603	108
1927	1,258	1,169	108				
1928	1,397	1,296	108	Average, 1920–37	1,279	1,225	104
1929	1,439	1,357	106				
1930	1,569	1,405	112				

TABLE 13 (a).—*Comparison of Actual Supply and Reserve Supply Level, Flue-Cured Tobacco, 1920–1937*

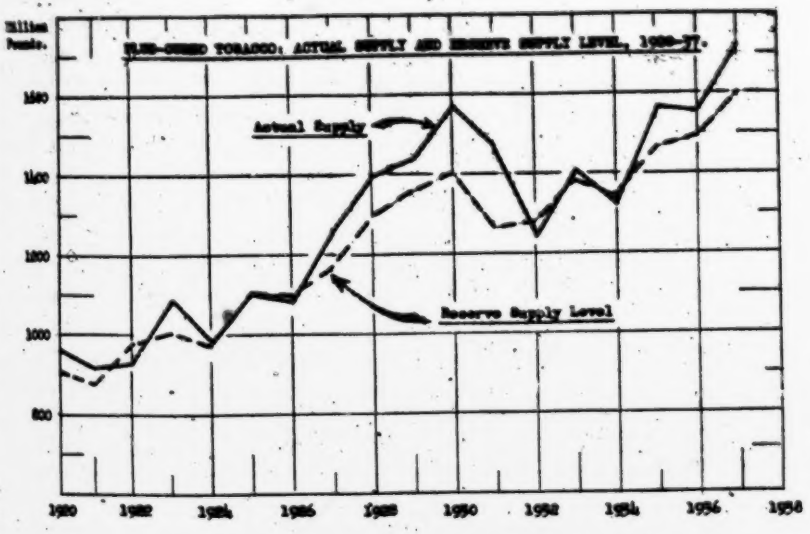
Year	Actual supply (1)	Reserve supply level (2)	Difference col. 1–2 (3)	Percent (col. 3–col. 2) (4)	See footnote [1] (5)	See footnote [2] (6)
	Million pounds	*Million pounds*	*Million pounds*	*Percent*	*Cents*	*Cents*
1920	969	910	59	6		21.5
1921	917	883	34	4	21.9	
1922	929	979	−50	−5	27.2	
1923	1,088	1,008	80	8		20.8
1924	983	974	9	1	21.6	
1925	1,102	1,108	−6	−1	20.0	
1926	1,084	1,102	−18	−2	24.9	
1927	1,258	1,169	89	8		20.5
1928	1,397	1,296	101	8		17.3
1929	1,439	1,357	82	6		18.0
1930	1,569	1,405	164	12		12.6
1931	1,464	1,266	198	16		8.4
1932	1,241	1,286	−45	−3	11.6	
1933	1,409	1,387	22	2	15.3	
1934	1,320	1,347	−27	−2	27.3	
1935	1,564	1,469	95	6		20.0
1936	1,554	1,497	57	4	22.2	
1937	1,738	1,603	135	8		23.0
Average	1,279	1,225	54	4	21.3	17.9

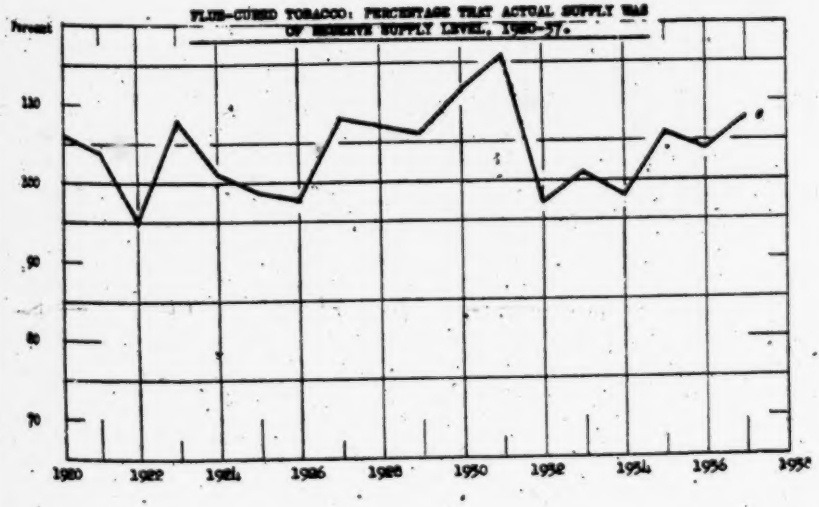
[1] In this column are prices in years when actual supply was less than 19 percent, or not more than 4 percent in excess of, reserve supply level.

[2] In this column are prices in years when actual supply was more than 4 percent in excess of reserve supply level.

Percentage that average of prices in years when actual supply was less than, or not more than 4 percent in excess of, reserve supply level was above the average of prices in years when actual supply was more than 4 percent in excess of the reserve supply level.

CHART I.


Million Pounds.
FLUE-CURED TOBACCO: ACTUAL SUPPLY AND RESERVE SUPPLY LEVEL, 1920-37.
Actual Supply
Reserve Supply Level
1600
1400
1200
1000
800
1920
1922
1924
1926
1928
1930
1932
1934
1936
1938


Percent
FLUE-CURED TOBACCO: PERCENTAGE THAT ACTUAL SUPPLY WAS OF RESERVE SUPPLY LEVEL, 1920-37.
110
100
90
80
70
1920
1922
1924
1926
1928
1930
1932
1934
1936
1938

XXIII

Prices

The price of flue-cured tobacco reacts to changes in the supply. During the period 1920 to 1937 the changes in the supply were associated with changes in the price. With the exception of one year (1922), the price has decreased relative to the previous year when the supply increased relative to the previous year. Without exception the price has increased relative to the previous year when the supply decreased relative to the previous year (Table 14, Chart II).

A comparison of actual prices for flue-cured tobacco during the period 1920 to 1937 with parity prices (namely, those prices which would have given a pound of tobacco the same purchasing power for commodities farmers buy as that which prevailed from August 1919 to July 1928), indicates the years in which prices for flue-cured tobacco were relatively high or low. In years when the actual supply was greater than the reserve supply level the price of flue-cured tobacco was lower relative to the parity price. In 1930 the actual supply was 12 percent above a reserve supply level. The purchasing power of a pound of flue-cured tobacco was 59 percent of the average purchasing power existing during 1919–1929. The actual price was 49 percent of the parity price in 1931, with an actual supply 16 percent above the reserve supply level. In years when the actual supply was less than the reserve supply level, prices of flue-cured tobacco were higher relative to parity prices. The actual supply was five percent less than the reserve supply level in 1922. The actual price was 119 percent of the parity price. In 1926, with an actual supply two percent less than normal, actual price was 108 percent of the parity price (Tables 13a and 15, Charts III and IV).

An accumulation of excessive supplies from 1927 to 1933 was accompanied by sharply decreased prices. By 1931 the flue-cured tobacco price was only 49 percent of the parity price. The price in 1932 was 38 percent higher than that in 1931, although it was 25 percent below the parity price (Tables 15 and 16, Charts III and IV).

The price in 1933 was influenced by the marketing agreement which became operative after the markets in North and South Carolina had been closed following grower protests because of low prices. Prior to the closing of the markets the prices were reported as being lower than in 1932, when the season average price was 11.6 cents per pound. The marketing agreement established a minimum of 17 cents and the average for the season including sales prior to the agreement was 15.3 cents, an increase of 32 percent above the price in 1932.

The price of flue-cured tobacco increased to 27.3 cents in 1934. Prices during the period 1934 to 1937 were at a level favorable to the growers. These prices were influenced by the operation and prospective operation of governmental programs regulating the production or marketing of tobacco.

TABLE 14.—*Flue-Cured Tobacco: Relationship Between Changes in Supply and Price, 1920–1937*

Year	Supply of flue-cured tobacco	Percent of previous year's supply	Average season price per pound	Percent of previous year's price
	Million pounds		*Cents*	
1920	856		44.4	
1921	969	113.2	21.5	48.4
1922	917	94.6	21.9	101.9
1923	929	101.3	27.2	124.2
1924	1,038	117.1	20.8	76.5
1925	963	90.3	21.6	103.8
1926	1,102	112.1	20.0	92.6
1927	1,084	98.3	24.9	124.5
1928	1,258	116.1	20.5	82.3
1929	1,397	111.0	17.3	84.3
1930	1,439	103.0	18.0	104.0
1931	1,569	109.0	12.0	66.7
1932	1,464	93.3	8.4	70.0
1933	1,241	84.8	11.6	138.1
1934	1,409	113.5	15.3	131.9
1935	1,320	93.6	27.3	178.4
1936	1,564	118.5	20.6	73.3
1937	1,554	99.4	22.2	111.0
1938	1,738	111.8	23.0	103.6

TABLE 15.—*Flue-Cured Tobacco: Actual Price and Computed Price[1] Per Pound, 1920–1937*

Year	Actual price	Computed price[1]	Actual price as percentage of computed price	Year	Actual price	Computed price[1]	Actual price as percentage of computed price
	(*Cents*)	(*Cents*)	(*Percent*)		(*Cents*)	(*Cents*)	(*Percent*)
1920	21.5	25.2	85	1929	18.0	22.6	80
1921	21.9	22.2	99	1930	12.0	20.2	59
1922	27.2	22.8	119	1931	8.4	17.2	49
1923	20.8	22.6	92	1932	11.6	15.4	75
1924	21.6	23.2	93	1933	15.3	17.7	86
1925	20.0	23.4	85	1934	27.3	18.9	144
1926	24.9	23.1	108	1935	20.0	18.3	109
1927	20.5	23.1	89	1936	22.2	19.5	114
1928	17.3	23.1	75	1937	23.0	18.9	122

[1] Computed price—the season average price that would have given flue-cured tobacco the same purchasing power with respect to items farmers buy as existed during the period August 1919 to July 1929.

TABLE 16.—*Flue-Cured Tobacco: Percentage Deviations of Actual Supply From the Reserve Supply Level and Percentage Deviations of Actual Price From Computed Price*[1]

Year	Percentage deviations of actual supply from reserve supply level	Percentage deviations of actual price from computed price[1]	Year	Percentage deviations of actual supply from reserve supply level	Percentage deviations of actual price from computed price[1]
1920	6	−15	1929	6	−20
1921	4	−1	1930	12	−41
1922	−5	19	1931	16	−51
1923	8	−8	1932	−3	−25
1924	1	−7	1933	2	−14
1925	−1	−15	1934	−2	44
1926	−2	8	1935	6	9
1927	8	−11	1936	4	14
1928	8	−25	1937	8	22

[1] Computed price—the season average price that would have given flue-cured tobacco the same purchasing power with respect to items farmers buy as existed during the period August 1919 to July 1929.

CHART II.

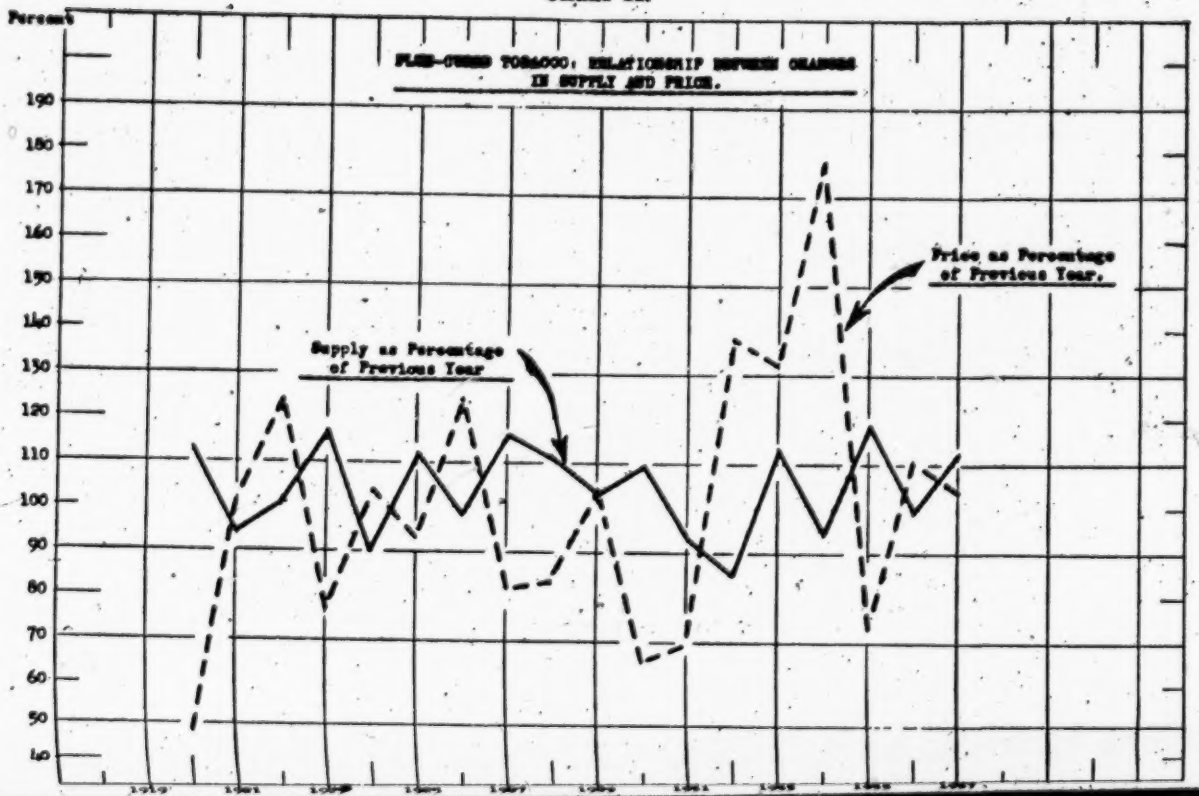
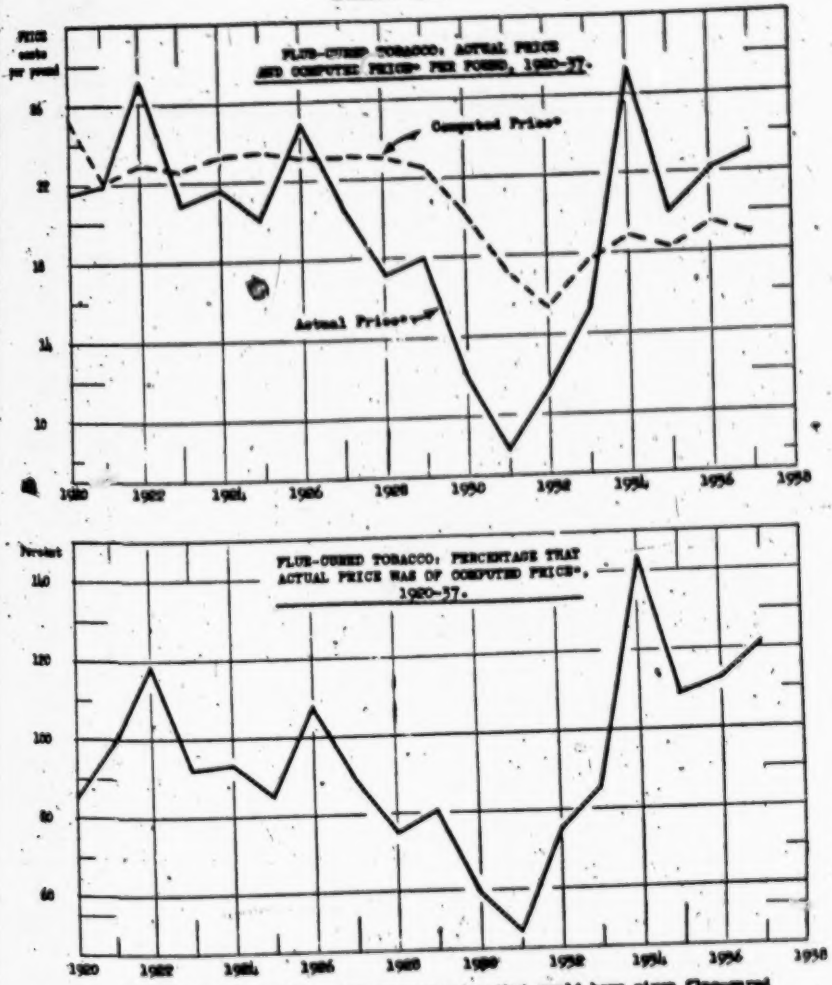
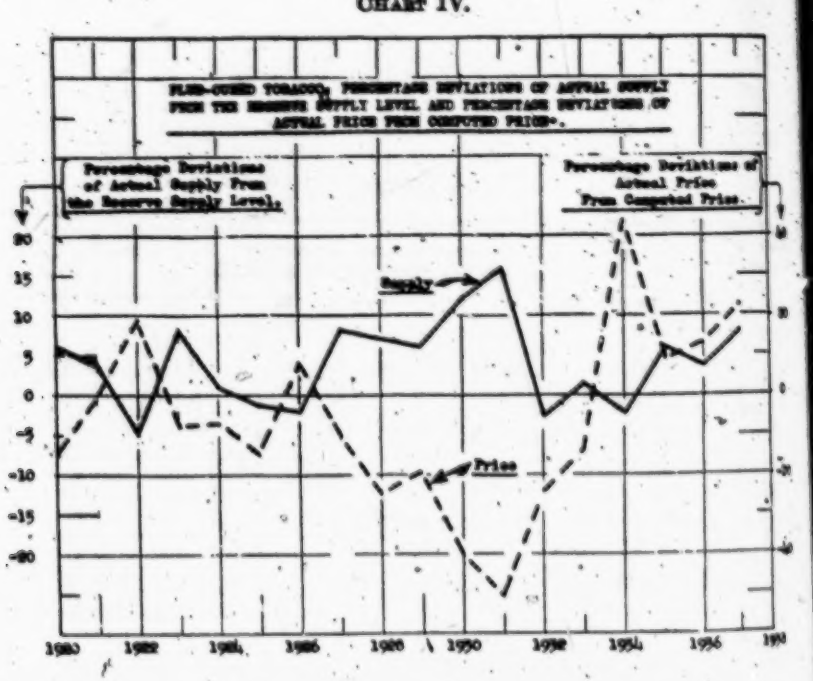

Percent
FLUE-CURED TOBACCO: RELATIONSHIP BETWEEN CHANGES IN SUPPLY AND PRICE.
190
180
170
160
150
140
130
120
110
100
90
80
70
60
50
40
Supply as Percentage of Previous Year
Price as Percentage of Previous Year.

CHART III.



* Computed price - the season average price that would have given flue-cured tobacco the same purchasing power with respect to items farmers buy as existed during the period August, 1919 to July, 1920.

CHART IV.



* Computed price - the seasonal average price that would have given flue-cured tobacco the same purchasing power with respect to items farmers buy as existed during the period August, 1919 to July, 1929.

XXIV

Farm Value

In 1927 the farm value of flue-cured tobacco was $147,300,000. In 1932 the farm value was $43,400,000. From 1927 to 1930 the total number of pounds marketed steadily increased from year to year. This continuous increase in marketing, together with an accumulated excess quantity of flue-cured stocks, brought about a decrease in the price and farm value. In 1927, the production of 718,800,000 pounds had a farm value of $147,300,000 whereas 865,200,000 pounds brought a farm value of only $103,400,000 in 1930.

By 1931 many farmers curtailed their marketings of flue-cured tobacco, and the total marketings dropped to 669,500,000 pounds. But with the accumulated excess supply from previous years, prices again were low—averaging 8.4 cents per pound with a farm value of $56,400,000. In 1932 an extremely unfavorable growing season coupled with a further curtailment of marketings by farmers, resulted in total marketings for the year of only 373,705,000 pounds. The resulting total supply was about in line with the reserve supply level. The prices increased about a third over the previous year—from 8.4 cents to 11.6 cents—but the farm value was only $43,400,000.

Beginning in 1933 the situation with respect to farm value of flue-cured tobacco has been affected by the operation or prospective operation of governmental programs designed to regulate either production or marketing of tobacco, or both. In 1933 the farm value of the 733,379,000 pounds marketed that year was $112,145,000 as compared with a value of about $82,000,000, indicated by the average price of 11.2 cents per pound for that portion marketed prior to the execution of a marketing agreement under section 8 (2) of the Agricultural Adjustment Act of 1933. For the four years 1934 to 1937 the farm value averaged approximately $165,558,000. This value was the result of an average annual marketing of 726,426,750 pounds and an average price per pound of 22.8 cents.

Available data indicate that the average price of flue-cured tobacco from 1933 to 1937, would have been less than 15.2 cents per pound as compared with the actual average of 21.3 cents had there been no governmental program in effect or in prospect to regulate production or marketing of such tobacco during such period. A price of 15.2 cents, with the average production of 727,817,000 pounds, would have resulted in an average farm value of $111,000,000 as contrasted with the actual average value of $155,000,000.

Average Marketings, Price, and Consumption of Flue-Cured Tobacco, and Percent Which Flue-Cured Tobacco Price Was of Cotton Price

	5-year Period 1927–31	5-year Period 1933–37
Average Marketings (pounds)	748, 521, 000	727, 817, 000
Average price per pound	15.2	21.3
Average world consumption of U. S.	682, 000, 000	662, 000, 000
Average tobacco price as percent of cotton price flue-cured tobacco	115	200

With an average price of 15.2 cents per pound during the five-year period 1927 to 1931 the average marketings amounted to 748,521,000 pounds, the average world consumption was 682,000,000 and the average tobacco price was 115 percent of the average cotton price. In the five-year period 1933–37 with an average price of 21.3 cents per pound the average marketings were 727,817,000 pounds with world consumption of 662,000,000 pounds and an average tobacco price equal to 200 percent of the average cotton price.

The average marketings from 1933 to 1937 were approximately 21 million pounds less than during the period 1927 to 1931. At the same time the price per pound during later period was 21.3 cents as contrasted with a price of 15.2 cents in the earlier period. World consumption in the later period was approximately 20 million pounds less than during the earlier period. The average tobacco price during the later period was 200 percent of the average cotton price as contrasted with 115 percent in the earlier period.

XXV

Farmers' Share of Receipts from Sale of Tobacco Products

The money received by farmers for tobacco is only a small part of the money paid for tobacco products by the consumer. The retailers and wholesalers of tobacco products receive pay for their services. If the tobacco product is sold in a State that levies a tax on the product, either the retailer or the wholesaler pays this tax from the amount that the consumer pays. From the amount left the manufacturer pays out about one-half for the excise tax on tobacco products. He also pays for distribution, for manufacturing, for storing the leaf, for the tobacco leaf, and the balance is profit.

In years when the supply was normal, farmers received (including income from the portion of the crop exported) approximately one-fourth of the total amount received by domestic manufacturers from the sale of tobacco products. The farm income from tobacco was about two-thirds as much as the excise taxes on tobacco products and about twice the manufacturers' profits. In years when the supply was relatively large, the farmers received a smaller proportion of the total. In 1931 and 1932 the farm value of tobacco was less than a third of the excise taxes and less than the manufacturer's profits.

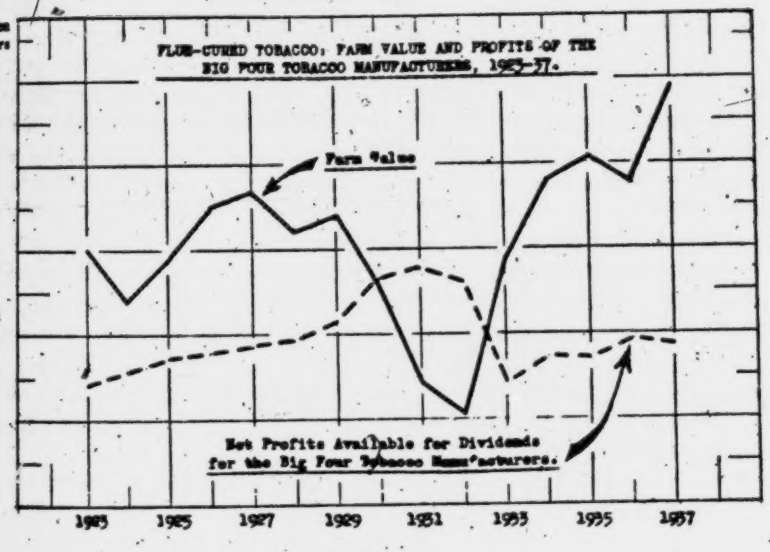
From 1923 to 1927, a period when the actual supply was approximately equal to the reserve supply level, the farm value of flue-cured tobacco was approximately twice the profits of those manufacturers who use 85–90 percent of the flue-cured tobacco that enters domestic consumption. In 1931 and 1932 the farm value of flue-cured tobacco was less than half the profits of such manufacturers (Table 17, Chart V).

TABLE 17.—*Flue-cured Tobacco: Farm Value and Profits of the "Big Four"[1] Tobacco Manufacturers, 1923–1937*

Year	Farm value	Profits available for dividends of "Big Four"[1] tobacco manufacturers	Year	Farm value	Profits available for dividends of "Big Four"[1] tobacco manufacturers
	(Million dollars)	*(Million dollars)*		*(Million dollars)*	*(Million dollars)*
1923	121	56	1931	56	110.6
1924	94	61.7	1932	43	104.6
1925	115	68.4	1933	112	57.7
1926	140	70.5	1934	152	68.3
1927	147	73.6	1935	162	69.1
1928	128	76.4	1936	152	77.3
1929	135	85.7	1937	197	77.3
1930	103	105.2			

[1] "Big Four" tobacco manufacturers used 85-90 percent of the flue-cured tobacco manufactured in the United States.

CHART. V.



XXVI

Purchase of Industrial Goods by Farmers

rchases of industrial goods in farming areas are dependent upon aintenance of a relationship between prices for farm products rices for industrial goods which will permit continuous trade as en farming and industrial areas. In years of low farm income ases of industrial goods in rural areas have also been low.

1926, when the total cash income of farmers was $9,658,000,000, spent approximately $2,867,000,000 for goods used in production 4,478,000,000 for goods for living. In 1932, when the cash income rmers was reduced to $4,201,000,000, farmers reduced their ex- tures for goods for use in production to $1,351,000,000 and their diture for consumers' goods to $1,302,000,000.

increase of purchases of industrial goods by farmers, with im- ment in their income, from 1932 to 1933 and 1934 is indicated by tent to which carloadings destined from industrial areas for the eastern agricultural area increased. Total shipments of manu- red commodities from industrial areas into the southeastern over four important railroads showed a gain of 38.8 percent in ar beginning July 1, 1933, and 97.8 percent in the year beginning l, 1934, compared to the year beginning July 1, 1932 (Table 18). ercentage increase was greatest in 1934–35 in the case of domestic ersonal goods, the increase being 141.9 percent.

acco farmers purchase smaller amounts of industrial goods, the purchasing power of tobacco is low. The registration of utomobiles in the six important tobacco producing States of nia, North Carolina, South Carolina, Georgia, Kentucky, and ssee and the farm income in these states showed a close rela-

tionship. Farm income in these states was 62 percent less a registration of new cars was 67 percent less in the year begin July 1932, than in the year beginning July 1928 (Table 19).

The number of voluntary sales of farms during the period declining farm income from 1928 to 1931 decreased and the numb of farms changing ownership on the basis of delinquent tax sa foreclosures of mortgages and bankruptcies increased. The numb of farms changing ownership in Georgia in 1932 on the basis delinquent tax sales was two and one-half times as high as the nu ber of farms that changed ownership on the same basis in 1929. T delinquent tax sales were even higher in some of the other princip tobacco producing States. The number of farms changing owne ship by delinquent tax sales in Tennessee and Virginia was appro mately six times as high in 1932 as in 1929 (Table 20). T number of farms changing ownership by foreclosures of mortga and bankruptcy increased 89 percent in Georgia and 289 percent Tennessee from 1929 to 1932.

As farm income increased, after the low period from 1930 to 19 the number of farms changing ownership on the basis of delinque tax sales, foreclosures of mortgages, and bankruptcies decreased. 1935 the number of farms changing ownership in Georgia because delinquent tax sales, foreclosures of mortgages, and bankruptcies w approximately one-third of the number in 1932.

The number of bank suspensions and the tobacco farm value Kentucky, Tennessee, Georgia, North Carolina, and South Caroli between the period 1922–1936 is shown on Table 21. During t period 1930–1933, when farm values were at their lowest, ba suspensions in these states were at their highest. For instance, 1929, the farm value of tobacco was $215,500,000 and bank suspensio numbered 62, while in 1931 the tobacco farm value was $99,800,0 with bank suspensions numbering 192.

TABLE 18.—*Total Shipments, by Groups of Commodities*

Group	YEAR 1 (July 1, 1932, to June 30, 1933)	YEAR 2 (July 1, 1933, to June 30, 1934)	YEAR 3 (July 1, 19 to June 30 1935)
	Pounds	*Pounds*	*Pounds*
Agricultural	56, 473, 000	99, 278, 000	136, 48
Domestic and personal	115, 953, 000	182, 309, 000	279, 77
Industrial and commercial	831, 431, 000	1, 179, 189, 000	1, 604, 10
General	1, 100, 499, 000	1, 445, 052, 000	2, 121, 38
Total	2, 094, 056, 000	2, 905, 828, 000	4, 141, 72

Increase in Total Shipments, by Groups of Commodities

Group	Year 2 over Year 1	Year 3 over Year 2	Year 3 over Year 1
	Percent	*Percent*	*Percent*
Agricultural	75.8	37.5	141.7
Domestic and personal	57.6	53.5	141.9
Industrial and commercial	43.6	36.0	95.3
Mineral	31.3	46.8	92.8
Total	38.8	42.5	97.8

TABLE 19.—*Farm Cash Income*[1] *and Registrations of New Motor Cars*[2] *in Principal Tobacco Producing States*

[Income in millions of dollars; registration in thousands]

	1928–29	1929–30	1930–31	1931–32	1932–33	1933–34	1934–35	1935–36
Virginia:								
Farm Income	146	156	104	83	62	78	91	106
Registrations	65	68	46	32	22	34	50	61
North Carolina:								
Farm Income	279	231	177	116	98	171	219	217
Registrations	74	56	36	26	22	48	65	66
South Carolina:								
Farm Income	117	121	97	61	48	70	82	91
Registrations	34	30	19	11	10	23	27	29
Georgia:								
Farm Income	193	207	156	90	64	103	120	134
Registrations	43	40	31	21	19	39	47	55
Kentucky:								
Farm Income	175	172	118	91	74	81	95	107
Registrations	56	52	32	22	19	31	39	50
Tennessee:								
Farm Income	161	161	109	85	67	85	95	102
Registrations	55	55	31	19	16	30	44	52
Total Six States:								
Farm Income	1,071	1,048	761	526	410	588	702	757
Registrations	327	281	195	131	108	205	272	313

[1] Farm cash income covers crop year for crops and calendar year for livestock and livestock products. Rental and benefit payments made under Agricultural Adjustment Administration not included. Source: Bureau of Agricultural Economics.

[2] Registrations of new passenger cars and new commercial cars covering the period July–June. Source: R. L. Polk & Co., Detroit, Michigan.

TABLE 20.—*Number of Farms Changing Ownership by Various Methods*

[Number per 1,000 farms]

	Virginia	North Carolina	Georgia	Kentucky	Tennessee	United States
Voluntary sales and trades[1]—12 months, beginning March 16:						
1929	16.3	19.1	17.5	30.0	18.5	23.7
1930	13.7	18.5	10.9	27.2	16.7	19.0
1931	9.8	11.0	10.6	19.0	18.0	16.2
1932	14.6	13.5	16.2	21.0	19.5	16.8
1933	12.6	19.0	18.8	20.1	20.0	17.8
1934	16.8	20.0	18.6	23.4	23.5	19.4
1935	20.6	25.4	21.7	28.9	28.7	24.0
Delinquent tax sales—12 months, beginning March 16:						
1929	2.6	10.8	5.5	6.4	2.3	5.1
1930	6.7	22.3	5.9	10.3	3.6	7.4
1931	9.5	35.6	10.0	21.9	10.1	13.3
1932	15.3	45.8	13.7	17.0	14.5	15.3
1933	13.6	25.1	11.9	10.1	8.4	11.1
1934	5.1	17.3	6.5	6.9	5.6	7.3
1935	3.8	10.7	4.0	5.5	4.1	5.9
Foreclosure of mortgages, bankruptcy, etc.[2]—12 months, beginning March 16:						
1929	10.4	15.0	18.5	12.6	8.8	15.7
1930	15.2	20.0	27.4	12.1	10.9	18.7
1931	29.3	32.6	26.8	17.9	23.0	28.4
1932	28.0	40.8	34.9	31.0	34.2	38.8
1933	19.6	29.6	24.3	16.1	24.2	28.0
1934	14.6	15.0	11.8	14.9	16.7	21.0
1935	15.1	15.2	12.5	15.8	14.3	20.3

[1] Including contracts to purchase (but not options).

[2] Including loss of title by default of contract, sales to avoid foreclosure, and surrender of title or other transfers to avoid foreclosure.

TABLE 21.—*Number of Bank Suspensions; Farm Value of Tobacco: Kentucky, Tennessee, Virginia, North Carolina, and South Carolina, 1922–1936*

Year	Number of Bank Suspensions	Farm Value of tobacco	Year	Number of Bank Suspensions	Farm Value of tobacco
1922	28	$232,200,000	1930	180	[illegible]
1923	51	222,200,000	1931	192	[illegible]
1924	49	181,600,000	1932	124	[illegible]
1925	74	179,300,000	1933	224	[illegible]
1926	79	183,900,000	1934	4	[illegible]
1927	68	197,600,000	1935	3	[illegible]
1928	48	215,300,000	1936	6	[illegible]
1929	62	215,500,000			

XXVII

Producer Marketing Cooperatives

Numerous attempts have been made during the past three hundred years to regulate the marketing of tobacco by marketing all or the major part of the tobacco crop through cooperative associations. Although tobacco cooperatives have been able to perform valuable services for farmers such as the operation of warehouses, redrying plants, and supply stores, their efforts to regulate marketing have been disappointing. As a result, associations that were valuable for some of the services which they performed lost the support of the farmers. The one main objective, regulation of marketing, overshadowed all others in importance. When a cooperative failed to regulate marketings of tobacco it had failed utterly and completely in the minds of many of the farmers.

In 1873 growers in Kentucky established warehouses for the purpose of storing tobacco in years of excess in an attempt to adjust marketing to demand. The benefits accruing were shared by all of the tobacco farmers while a few bore all of the costs of the project. The unfairness of the situation caused the failure of this attempt as it has many since that time. The Planters' Protective Association and the Burley Tobacco Society were organized in Kentucky and Tennessee in 1905 and 1906. These organizations were very active in 1906 and 1907. The unfairness of members of these associations bearing the costs of attempting to regulate the marketings caused such intense feeling that bands of "night riders" were organized. These riders burned tobacco barns and destroyed crops of farmers who would not support the organization.

Several tobacco cooperative associations were formed in 1920 to 1922. The larger and better known of these were:

Tri-State Tobacco Growers Cooperative Association.
Burley Tobacco Growers Cooperative Association.
Dark Tobacco Growers Cooperative Association.
Connecticut Valley Tobacco Association.
Maryland Tobacco Growers Cooperative Association.
Northern Wisconsin Cooperative Tobacco Pool.

The Tri-State Tobacco Cooperative Association was organized in 20. Editors of farm and daily newspapers, doctors, lawyers, bank-, and others who understood the economic situation of the tobacco ower and its consequent effect on the prosperity of the area gave ir assistance in starting the organization. The association at-mpted to secure delivery of over half of the flue-cured, dark-fired, d Virginia sun-cured types of tobacco grown in Virginia, North rolina, and South Carolina. This association operated for four ars and received from members approximately 531,000,000 pounds tobacco valued in excess of $100,000,000. Instead of handling more an 50 percent of the tobacco produced in the three States, it re-ived 35 percent in 1922, 28.5 percent in 1923, 22.9 percent in 1924, nd 14.6 percent in 1925. In June 1926, the court appointed receivers r the association.

The Burley Tobacco Growers Cooperative Association was organ-ed in 1920. It established its own warehouses which were operated y subsidiary corporations. The cooperative operated redrying equip-ent and had storage capacity for approximately 225,000 hogsheads f tobacco. The association has not received tobacco from members nce handling the 1926 crop with which the original marketing con-act expired. The Burley Tobacco Growers Cooperative Association f Lexington, Kentucky, still exists in corporate form, owns some roperty, and maintains an office. Directors of the association meet ccasionally and it is possible that the association may some day erform some of the marketing services for tobacco planters.

The Dark Tobacco Growers Cooperative Association was organized n Kentucky in 1922. It operated much in the same manner as the urley Association and ceased operation at the expiration of the ember contracts after delivery of the 1926 crop.

The Connecticut Valley Tobacco Association was organized in 1922. his association controlled more than two-thirds of the production in e Connecticut valley in 1922 and it was anticipated that marketing ould be regulated successfully; however, at the expiration of the first ntract the number of growers who had supported the association as so small that it was deemed inadvisable to continue operation. his association performed all the functions of grading, sorting, stor-g, and preparation of the tobacco for the manufacturer.

The Maryland Tobacco Growers Cooperative Association was or-anized in 1920 and has been in business continually since that date. s marketing agreement is an agency contract revocable in any year y either party. The State aids this association by furnishing office ace, heat, light, etc., without cost. Free storage of tobacco is pro-ded by the State to growers and buyers for a period of six months. his association does not regulate the marketing of tobacco. During cent months when the association was selling the 1937 tobacco, meet-

ings were held by Maryland tobacco growers to protest the low tobacco prices.

The Northern Wisconsin Cooperative Tobacco Pool which was organized in 1922 has been operating since that date. It grades and stores the tobacco and pools similar grades so as to be able to offer large quantities of the same grade to buyers.

The South Carolina Tobacco Growers' Marketing Association was organized in the spring of 1930. During the first year it handled about 17,000,000 pounds of flue-cured tobacco which it attempted to sell privately. The members voted to suspend delivery, September 1931.

The Eastern Dark-Fired Tobacco Growers Marketing Association, *The Western Dark-Fired Tobacco Growers Marketing Association*, and the *Stemming District Tobacco Growers Marketing Association* were formed in the dark tobacco area of Kentucky and Tennessee in 1931.

The Virginia Bright Tobacco Cooperative Association, and the *Virginia Dark-Fired Tobacco Growers Association* were formed in Virginia in 1932. The tobacco received from members was sold at auction. Approximately 2,000,000 pounds or 7 percent of the flue-cured tobacco produced in Virginia was handled in 1932, the last year of operation. The Virginia Dark-Fired Tobacco Growers Association handled more than 6,000,000 pounds or 47 percent of the dark-fired tobacco produced in Virginia in 1932. This association is still functioning.

There are other tobacco cooperatives which have been organized in the United States. None of the associations have been successful in regulating the marketing tobacco. The burden of the regulation which they have attempted has been borne by the members, while the non-members received an equal or greater amount of the advantages. Their situation has caused uprisings among the farmers, with occasional violence such as the days of the "night riders," when property was destroyed.

XXVIII

State Compacts

In 1936 it was proposed that the several States in which tobacco is grown should enact legislation providing for the regulation of the production and marketing of tobacco in such States. The States were to enact uniform legislation and, with the consent of Congress as required by the Constitution, to enter into compacts or agreements providing for the uniform enforcement of the several State laws.

A general conference agreement was reached as to the form and content of the State acts necessary to provide for the regulation of the production and marketing of tobacco, and a bill passed by the

inia Assembly was approved on March 13, 1936, by the Governor irginia. This bill empowers the State of Virginia to enter into mpact with other States in which the same type of tobacco was n, and established a tobacco commission to be responsible for nforcement of the act. The operation of the act with respect y type of tobacco produced in Virginia was made contingent the execution of a compact with the other States in which arger part of the same type of tobacco was grown.

ngress passed the necessary legislation authorizing the States to into compacts and the President approved the bill on April 25, (7 U. S. C. 515 etc.). The Act provided for the establishment mpacts among the several States with respect to each kind of co as well as for the regulation of marketing of tobacco from s in Puerto Rico in years that a compact authorizing quotas was ect with respect to cigar-filler and binder types of tobacco in the ipal producing States for these types of tobacco. The act au- zed the making of advances to a tobacco commission established ch State for use in defraying costs of administering the State Act such time as funds should be collected by the commission with h to repay the advances and to defray further administrative nses. The act also authorized the Secretary of Agriculture to loans for administrative purposes to an association of tobacco ucers which might operate with respect to the 1936 crop in gia in a manner similar to the tobacco commissions established e State acts providing for State compacts. This provision was in order to make it possible for farmers and tobacco buyers in gia to participate in the regulations of marketings in 1936 because s considered the Georgia legislature would not meet to consider nact legislation to provide for a State compact for 1936.

association of producers was formed and contracts were entered y a large number of producers in Georgia and Florida. The pro- s signed contracts which were to become effective if Virginia, Carolina, and South Carolina participated in the compact. The rnor of North Carolina did not call a special session of the North ina legislature. A compact with respect to flue-cured tobacco not be effective without the participation of North Carolina the operation of the Virginia act with respect to flue-cured to- was contingent upon the enactment of legislation in North ina.

ner State legislatures did not enact in 1936 legislation providing tate compact with respect to tobacco. However, the South Caro- egislature did consider such legislation.

1937 the General Assembly of Kentucky enacted a law which in respects differed materially from the Virginia law. An act of eneral Assembly of North Carolina passed in 1937 was in some

respects also different from the Virginia act. The States of Carol
Georgia, Ohio, Connecticut, and Pennsylvania did not enact anti
legislation.

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Intervening Defendant.

U. S. GOVERNMENT PRINTING OFFICE: 1933

the District Court of the United States for the Middle District of Georgia, Valdosta Division

JAMES H. MULFORD ET AL., PLAINTIFFS

v.

NAT SMITH ET AL., ORIGINAL DEFENDANTS,

and

UNITED STATES OF AMERICA, INTERVENING DEFENDANT

EXHIBITS REFERRED TO IN STIPULATION OF FACTS AND EVIDENCE

Exhibit 1

. A. A. Flue-cured Tobacco 1938–1. Issued February 18, 1938. ited States Department of Agriculture. Agricultural Adjustment ninistration. By the Secretary of Agriculture of the United tes of America.

A PROCLAMATION

Whereas the Act approved February 16, 1938, entitled "Agricul-l Adjustment Act of 1938," provides:

Sec. 312. (a) Whenever, on the 15th day of November of any ndar year, the Secretary [of Agriculture] finds that the total ply of tobacco as of the beginning of the marketing year then ent exceeds the reserve supply level therefor, the Secretary shall claim the amount of such total supply, and, beginning on the first of the marketing year next following and continuing throughout year, a national marketing quota shall be in effect for the tobacco keted during such marketing year. The Secretary shall also rmine and specify in such proclamation the amount of the na-al marketing quota in terms of the total quantity of tobacco which be marketed, which will make available during such marketing a supply of tobacco equal to the reserve supply level. * * *";

Whereas said Act contains, in section 301 (b), the following defini-s of terms here pertinent:

'Total supply' of tobacco for any marketing year shall be the y-over at the beginning of such marketing year plus the estimated

production thereof in the United States during the calendar year in which such marketing year begins * * *."

"'Carry-over' of tobacco for any marketing year shall be the quantity of such tobacco on hand in the United States at the beginning of such marketing year, which was produced in the United States prior to the beginning of the calendar year then current * * *."

"'Marketing year' means, in the case of the following commodities, the period beginning on the first and ending with the second date specified below:

* * * * * * *

"Tobacco (flue-cured), July 1–June 30 * * *."

"'Reserve supply level' of tobacco shall be the normal supply plus 5 per centum thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty."

"The 'normal supply' of tobacco shall be a normal year's domestic consumption and exports plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports as an allowance for a normal carry-over."

"'Normal year's domestic consumption,' in the case of * * * tobacco, shall be the yearly average quantity of the commodity produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption."

"'Normal year's exports' in the case of * * * tobacco * * * shall be the yearly average quantity of the commodity produced in the United States that was exported from the United States during the ten marketing years * * * immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.";

Whereas said Act provides, in section 301 (c), that "The latest available statistics of the Federal Government shall be used by the Secretary [of Agriculture] in making the determinations required to be made by the Secretary under this Act.";

Whereas section 312 (d) of said Act provides:

"In connection with the determination and proclamation of any marketing quota for the 1938–1939 marketing year, the determination by the Secretary pursuant to subsection (a) of this section shall be made and proclaimed within fifteen days following the date of the enactment of this Act * * *."; and

Whereas said Act was enacted on the 16th day of February, 1938:

Now, therefore, be it known that I, H. A. Wallace, Secretary of Agriculture of the United States, acting under and pursuant to, and by virtue of, the authority vested in me by the Act of Congress known as the Agricultural Adjustment Act of 1938, approved February 16, 1938, upon the basis of the latest available statistics[1] of

[1] Rounded to the nearest 1,000,000 pounds.

ral Government, do hereby find, determine, specify, and under section 312 of said Act:

at the "reserve supply level" of flue-cured tobacco is 000 pounds;

at the "total supply" of flue-cured tobacco for the marketing such tobacco beginning July 1, 1937, was 1,733,000,000 nd exceeds the reserve supply level of such tobacco; and

at the amount of the national marketing quota for flue-cured n terms of the total quantity of such tobacco which may be , which will make available during the marketing year g July 1, 1938, a supply of such tobacco equal to the reserve vel of such tobacco, is 705,000,000 pounds.

t Washington, D. C., this 18th day of February, 1938. Wit- hand and the seal of the Department of Agriculture.

H. A. WALLACE,
Secretary of Agriculture.

Exhibit 2

AA-1-A. Issued February 18, 1938. United States Depart- Agriculture. Agricultural Adjustment Administration.

TIONS FOR HOLDING REFERENDA ON COTTON AND FLUE-CURED TOBACCO MARKETING QUOTAS ON THE 1938 CROP.

Pursuant to the Agricultural Adjustment Act of 1938)

uant to sections 347 and 312 of the Agricultural Adjustment 1938, the Secretary of Agriculture is directed to conduct a dum by secret ballot of farmers who were engaged in the pro- of cotton in 1937 and a separate referendum of farmers who gaged in the production of flue-cured tobacco in 1937 in order rmine whether they favor or oppose cotton or flue-cured marketing quotas, as the case may be, with respect to the op.

ough the referendum of cotton farmers as well as the referen- f flue-cured tobacco farmers will be conducted in the com- on the same day and at the same place by the same com- referendum committee, and although the procedure for con- each referendum is very similar, the referenda are not other- lated. Separate ballot boxes should be provided in each com- where referenda are being held on both cotton and flue-cured marketing quotas. It should be clearly understood that a to vote in either one or both of the referenda must be eligible. marketing quotas are effective if two-thirds or more of the farmers voting in the referendum favor them; likewise flue- tobacco marketing quotas are effective if two-thirds or more tobacco farmers voting in the flue-cured tobacco referendum

favor them. The Secretary of Agriculture is directed to proclaim the result of each referendum not later than 45 days after the enactment of the act.

The following forms will be used:

Cotton 201—Notice—Cotton Marketing Quota Referendum.

Tobacco 201—Notice—Flue-Cured Tobacco Marketing Quota Referendum.

38-AAA-1-A—Instructions for Holding Referenda on Cotton and Flue-Cured Tobacco Marketing Quotas on the 1938 Crop.

Cotton 202—1938 Cotton Marketing Quota Referendum Ballot.

Tobacco 202—1938 Flue-Cured Tobacco Marketing Quota Referendum Ballot.

Cotton 203—Register of Ballots—1938 Cotton Marketing Quota Referendum.

Tobacco 203—Register of Ballots—1938 Flue-Cured Tobacco Marketing Quota Referendum.

Cotton 204—Community Summary of 1938 Cotton Marketing Quota Ballots.

Tobacco 204—Community Summary of 1938 Flue-Cured Tobacco Marketing Quota Ballots.

Cotton 205—County Summary of 1938 Cotton Marketing Quota Ballots.

Tobacco 205—County Summary of 1938 Flue-Cured Tobacco Marketing Quota Ballots.

Cotton 206—State Tabulation of 1938 Cotton Marketing Quota Ballots.

Tobacco 206—State Tabulation of 1938 Flue-Cured Tobacco Marketing Quota Ballots.

A. GENERAL INSTRUCTIONS TO COUNTY COMMITTEES

The county committee of the County Agricultural Conservation Association (hereinafter referred to as the county committee) shall be responsible for and in charge of the referendum on marketing quotas for cotton, and wherever applicable, for tobacco, which will be held in the county on Saturday, March 12, 1938, and it shall—

1. Designate a readily accessible place for balloting in each community and give public notice of the time and place for balloting by posting the appropriate notice form at least 5 days in advance of the voting day in one or more public places within each community. Make use (without advertising expense) of all available agencies of public information, including both the press and the radio, to give farmers in the county full and accurate notice of the day and hours of voting, the precise location of polling places, and the basis of eligibility to vote. Public notice should in all cases be given as soon as practicable after conditions of holding the referendum have been determined but must in every instance be given at least 5 days in advance of the date of the referendum.

2. Designate in each community three local farmers as members of the community referendum committee to be in charge of holding in the community the referendum on cotton marketing quotas as well as the referendum on flue-cured tobacco marketing quotas. One of the members shall be designated as chairman of the community referendum committee.

3. Assist each community referendum committee in providing a ballot box for the ballots cast in the referendum on marketing quotas for cotton and a separate ballot box for the ballots cast in the referendum on marketing quotas for flue-cured tobacco.

4. Furnish each community referendum committee with a list of all the persons (owner-operators, share tenants, tenant-renters, and share-croppers) in the community who were engaged in the production of cotton during 1937, and also a separate list of those engaged in the production of flue-cured tobacco in 1937.

5. Deliver to the chairman of each community referendum committee ballot forms, register forms for use by the community referendum committee in tabulating the results in the community, and three or more sets of community summary forms on which to record the summaries of the ballots cast in the community, together with instructions respecting balloting, keeping the registers, tabulating ballots, and certifying the results.

6. See that all appropriate measures are taken to insure that each referendum is conducted by secret ballot.

7. Convene not later than Monday, March 14, 1938, for the purpose of receiving and tabulating the data from community summaries, using the county summary forms for this purpose. Four copies of each county summary showing the county results shall be prepared and certified, two copies of which shall be sent to the State committee not later than 3 days after the date of the referenda, one copy of which shall be posted in a conspicuous place in or near the county office, and one copy of which shall be filed in or near the office of the County Agricultural Conservation Association. One copy of each community summary shall likewise be posted in a conspicuous place in or near the county office.

8. Make an investigation in each case of a controversy respecting eligibility of a voter. Where the ballot is found in a sealed envelope marked "Challenged" by the community referendum committee and bearing the voter's name, the eligibility of such person shall first be determined; and if such person is determined to be eligible the envelope shall be opened and the ballot tabulated on the county summary. If it is determined such person was not eligible to vote, the envelope shall remain sealed and shall be preserved with the ballots as provided in paragraph 9.

9. Seal the voted ballots, register sheets, and community summaries for each county in envelope or packages (marked "Cotton referendum, 1938" or "Flue-cured tobacco referendum, 1938," as the case may be, followed by the name of the county) which shall be

kept under lock and key in a safe place under the supervision of the secretary of the County Agricultural Conservation Association for a period of 60 calendar days. If no contest has arisen at the end of such time the ballots shall be destroyed and the community summaries filed in the county office.

10. Make an investigation in cases of dispute regarding the correctness of the summary of the referendum in a community on marketing quotas for either tobacco or cotton. No dispute shall be investigated unless it has arisen within 2 days after the date on which the referendum in question was held. The county committee shall promptly decide the disputed matter and immediately report its findings to the State committee and send by registered mail or deliver in person to the State office all voted ballots, register forms, and community summary sheets involved in the dispute.

B. INSTRUCTIONS TO COMMUNITY REFERENDUM COMMITTEES

The community referendum committee designated by the county agricultural conservation committee shall:

1. Arrange with the assistance of the county committee for conducting by secret ballot referenda of all eligible cotton and flue-cured tobacco farmers tendering ballots within the hours for receiving same.

2. Assist the county committee in giving public notice of the time and place for casting ballots to farmers at least 5 days in advance of the date on which the referenda will be held.

3. Provide a place where each farmer eligible to vote can prepare and cast a ballot without interference and without anyone seeing how he votes.

4. Open the polls not later than 9 a. m. on Saturday, March 12, 1938.

5. See that no device is used whereby any voter's ballot may be identified (except as provided in paragraph 11 below in the case of a challenged ballot), and instruct each voter to fold his ballot before placing it in the ballot box.

6. Provide ballot boxes where ballots may be deposited. Any container so arranged that ballots cannot be seen or removed without breaking seals on the container will be suitable. If strip adhesive paper or similar seals are used, such seals should be signed or initialed so that breaking or replacing the seal will affect or destroy the identifying marks.

7. Hold the referenda in a fair and unbiased manner and explain to eligible farmers making inquiry the procedure to be followed in casting their ballots.

8. Issue in each referendum one ballot to each eligible voter requesting it.

9. See that all appropriate measures are taken to insure that the referenda are conducted by secret ballot.

10. Record on the applicable register of ballots the name and address of each farmer to whom a ballot is issued.

11. Issue in each referendum a ballot to each person who claims a right to vote, even though his right to vote has been challenged by the community referendum committee. Such ballot, after being marked by the challenged voter, shall be placed in a sealed envelope bearing the name of the voter, the notation "Challenged," and the reason for the challenge. The sealed envelope containing the challenged ballot shall be placed in the ballot box and the name of each farmer whose vote is challenged shall be listed at the bottom of the applicable register of ballots.

12. Stop receiving ballots at 7 p. m. on the date of the referenda.

13. Tabulate and record the results on the applicable community summary sheet after closing the polls. The number of challenged ballots cast and sealed in envelopes shall be entered on the applicable community summary sheet in the space provided but should not be entered as being either for or against the marketing quota. If any ballots are found to be mutilated and cannot be entered as being either for or against the marketing quota the number should be entered in the space provided.

14. Sign the registers and community summary forms and certify to their accuracy.

15. Seal the registers and community summary forms, and the unused ballots, in envelopes provided for that purpose and deliver them to the county committee not later than 12 o'clock noon, Monday, March 14, 1938. The chairman of the community referendum committee shall be responsible for the safe delivery of the forms and ballots.

16. Post one copy of each community summary in a conspicuous place at the polls.

C. INSTRUCTIONS TO STATE COMMITTEES

The State committee shall be responsible for and in charge of the referendum in the State and it shall:

1. Summarize on State tabulation forms all county summaries and forward to the applicable regional director, Agricultural Adjustment Administration, Washington, D. C., two certified copies of each summary for the State, not later than 7 days after the day of the referenda. One copy of each such report shall be filed in the State office of the Agricultural Adjustment Administration. Should one sheet for each report prove insufficient for listing the information with respect to all counties in the State, additional copies of each State tabulation form may be used as continuation sheets, in which case the totals should be entered on the last page only.

2. Make an investigation of any report from any county regarding controversies, irregularities, or the correctness of reports of the referendum, not later than 7 days after the date of the referendum,

3. Forward to the applicable regional director its findings in such cases.

D. ELIGIBILITY AND GENERAL PROVISIONS

Official and final tabulation of the results of the referenda will be made by the Agricultural Adjustment Administration and the result of the referenda will be announced as soon as the Secretary of Agriculture has determined that such tabulations of the results are correct. State and county committees are at liberty to give out to the press unofficial reports of the total "Yes" and total "No" votes in each referendum in the State or county.

Only farmers who were engaged in the production of cotton in 1937 are eligible to vote in the cotton marketing quota referendum. Likewise, only farmers who were engaged in the production of flue-cured tobacco in 1937 are eligible to vote in the flue-cured tobacco marketing quota referendum. The fact that a farmer is eligible to vote in one referendum does not necessarily mean that he is eligible to vote in the other. Any person who shared in the proceeds of the 1937 cotton crop as landowner, operator, share-tenant or sharecropper shall be considered as engaged in the production of cotton. Likewise, any person who shared in the proceeds of the 1937 Flue-cured tobacco crop as landowner, operator, share-tenant, or sharecropper shall be considered as engaged in the production of flue-cured tobacco.

No farmer (whether an individual, partnership, corporation, firm, association, or other legal entity) shall be entitled to more than one vote in each referendum, even though he may have been engaged in 1937 in the production of cotton or flue-cured tobacco in two or more communities, counties, or States.

If a community referendum committee determines that a producer residing in the community within the jurisdiction of that committee is eligible to vote by reason of having been a cotton farmer or flue-cured tobacco farmer, as the case may be, in 1937 in another community, the committee may issue a ballot form to him and permit him to cast a ballot, provided the committee also determines that such farmer has not previously cast a ballot in another community. If the committee cannot so determine, the committee shall "challenge" the ballot as heretofore outlined.

There shall be no voting by proxy or agent but a duly authorized officer of a corporation, firm, association, or other legal entity shall be allowed to cast its vote.

In case several persons, such as husband, wife, and children, participated in the production of cotton or flue-cured tobacco in 1937 under a lease or sharecropping agreement, only the person or persons who signed or entered into the lease or sharecropping agreement shall be eligible to vote.

In the event two or more persons engaged in producing cotton or flue-cured tobacco in 1937 jointly, in common, or in community, each

Since marketing quotas are not applicable to cotton the staple of ich is 1½ inches or more in length, a person who was engaged in production of such cotton in 1937 shall not be eligible to vote unss he was also engaged in the production of cotton in 1937 the staple which was less than 1½ inches in length.

If the Secretary of Agriculture deems it necessary, any report of y community referendum committee, county committee, or State mmittee shall be reexamined and rechecked by such persons or agens as the Secretary may designate and a report to him made thereon.

Done at Washington, D. C., this 18th day of February, 1938. Witss my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

Exhibit 3

By the Secretary of Agriculture of the United States of America.

A PROCLAMATION

Whereas, pursuant to the provisions of Section 312 of the Agricural Adjustment Act of 1938, the Secretary of Agriculture conted a referendum on March 12, 1938, to determine whether farmers o were engaged in production of the 1937 crop of flue-cured tobacco or or oppose the establishment, pursuant to the provisions of t I, Subtitle B, Title III of said Act, of a marketing quota for -cured tobacco marketed during the marketing year beginning y 1, 1938:

Now, therefore, be it known that I, Henry A. Wallace, Secretary of riculture of the United States of America, acting under and purnt to, and by virtue of, the authority vested in me by said Sec. 312 of the Agricultural Adjustment Act of 1938, do hereby claim the result of said referendum to be as follows:

19,842 votes, 86.2 percent of the total votes cast, were in favor of marketing quota;

5,253 votes, 13.8 percent of the total votes cast, were opposed to marketing quota; and

55,095 were the total votes cast.

Done at Washington, D. C., this 25th day of March 1938. Witness hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

Exhibit 4

United States Department of Agriculture, Agricultural Adjustment Administration, Washington, D. C.

DETERMINATION OF THE APPORTIONMENT AND ADJUSTMENT OF THE NATIONAL MARKETING QUOTA FOR FLUE-CURED TOBACCO FOR THE 1938–39 MARKETING YEAR

UNITED STATES DEPARTMENT OF AGRICULTURE,
Office of the Secretary.

Pursuant to section 313 of the Agricultural Adjustment Act of 1938 (approved February 16, 1938), as amended, I, M. L. Wilson, Acting Secretary of Agriculture, do hereby determine that the national marketing quota for flue-cured tobacco for the 1938–39 marketing year, as proclaimed by the Secretary of Agriculture on February 18, 1938, be apportioned and adjusted in accordance with the following table:

States and new farms (i. e., farms on which tobacco is produced for the first time in 5 years)	Apportionment of national quota proclaimed February 18, 1938	Adjustment pursuant to section 313 (a) to bring State up to 75% of 1937 production	Adjustment pursuant to section 313 (c) 4% increase all States	Adjustment pursuant to section 313 (e) to bring State up to minimum State poundage	Totals as apportioned and adjusted
	1,000 pounds	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*
Virginia	62,940	0	2,518	0	65,458
N. Carolina	466,998	0	18,680	0	485,678
S. Carolina	77,126	3,934	3,242	0	84,302
Georgia	68,320	0	2,733	0	71,053
Florida	8,393	2,191	423	0	11,007
Alabama	73	15	4	328	420
New farms	21,150	0	0	0	21,150
Total U. S	705,000	6,140	27,600	328	739,068

Done at Washington, D. C., this 22nd day of July, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

M. L. WILSON,
Acting Secretary of Agriculture.

Exhibit 5

United States Department of Agriculture, Agricultural Adjustment Administration, Washington, D. C.

REVISED DETERMINATION OF THE APPORTIONMENT AND ADJUSTMENT OF THE NATIONAL MARKETING QUOTA FOR FLUE-CURED TOBACCO FOR THE 1938–39 MARKETING YEAR

UNITED STATES DEPARTMENT OF AGRICULTURE,
Office of the Secretary.

It having been determined to be necessary to revise the determination of the apportionment and adjustment of the national marketing

quota for flue-cured tobacco for the 1938–39 marketing year, made by the Secretary of Agriculture on the 22d day of July, 1938, I, M. L. Wilson, Acting Secretary of Agriculture, in revision of the aforesaid determination, and pursuant to Section 313 of the Agricultural Adjustment Act of 1938, as amended, do hereby determine that the national marketing quota for flue-cured tobacco for the 1938–39 marketing year, as proclaimed by the Secretary of Agriculture on February 18, 1938, be apportioned and adjusted in accordance with the following table:

States and new farms (i. e., farms on which tobacco is produced for the first time in 5 years)	Apportionment of national quota proclaimed February 18, 1938	Adjustment pursuant to Section 313 (a) to bring State up to 75% of 1937 production	Adjustment pursuant to Section 313 (e) 4% increase all States	Adjustment pursuant to Section 313 (e) to bring State up to minimum State poundage	Totals as apportioned and adjusted
	1,000 pounds	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*
Virginia	66,215	0	2,649	0	68,864
N. Carolina	469,071	0	18,763	0	487,834
S. Carolina	69,212	11,848	3,242	0	84,302
Georgia	71,637	0	2,865	0	74,502
Florida	7,645	2,939	423	0	11,007
Alabama	70	18	4	328	420
New Farms	21,150	0	0	0	21,150
Total U. S	705,000	14,805	27,946	328	748,079

Done at Washington, D. C., this 13th day of August, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

M. L. WILSON,
Acting Secretary of Agriculture.

Exhibit 6

Form 38—Tobacco 28. United States Department of Agriculture. Agricultural Adjustment Administration.

REGULATIONS PERTAINING TO FLUE-CURED TOBACCO MARKETING QUOTAS FOR THE 1938–1939 MARKETING YEAR

Issued July 22, 1938

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REGULATIONS PERTAINING TO FLUE-CURED TOBACCO MARKETING QUOTAS FOR THE 1938–1939 MARKETING YEAR

UNITED STATES DEPARTMENT OF AGRICULTURE,
Office of the Secretary.

By virtue of the authority vested in the Secretary of Agriculture by Title III of the Agricultural Adjustment Act of 1938 (Public Law No. 430, 75th Congress, approved February 16, 1938), as amended, I, M. L. Wilson, Acting Secretary of Agriculture, do hereby make, prescribe, publish, and give public notice of the following regulations pertaining to flue-cured tobacco marketing quotas for the 1938–1939 marketing year, to be in force and effect until amended or superseded by regulations hereafter made by the Secretary of Agriculture under said Act.

Done at Washington, D. C., this 22nd day of July, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

M. L. WILSON,
Acting Secretary of Agriculture.

ARTICLE I—GENERAL

SECTION 101. *Definitions.*—As used in these regulations and in all forms and documents in connection therewith, unless the context or subject matter otherwise requires:

Act means the Agricultural Adjustment Act of 1938 and any amendments thereto.

Administrator means the Administrator of the Agricultural Adjustment Administration of the United States Department of Agriculture.

County Committee means the county committee utilized under the Act.

County Office means those persons or committees in the county who, under authorization by the Secretary of Agriculture, are responsible for the local administration of the Act.

Dealer means a person who engages, to any extent, in the business of acquiring tobacco from producers; but no warehouseman shall be considered a dealer because of any purchase of tobacco made by him on his own warehouse floor if the identical tobacco is subsequently resold by him on his own warehouse floor.

Farm means the farm for which the marketing quota was established.

Farm Marketing Quota or Quota means a flue-cured tobacco marketing quota established for a farm under Section 313 of the Act.

Field Assistant means a field assistant of the Agricultural Adjustment Administration, United States Department of Agriculture.

Flue-Cured Tobacco means tobacco classified in Service and Regulatory Announcement numbered 118 of the Bureau of Agricultural Economics of the United States Department of Agriculture, as types 11, 12, 13, and 14, and collectively known as flue-cured tobacco.

Marketing means the first bona fide disposition by sale, barter, or exchange. "Market" and "Marketed" shall have corresponding meanings to the term "marketing."

Marketing Card or Card means a marketing card (Form 38–Tobacco 14) issued for a farm pursuant to the regulations.

The 1938–39 Marketing Year means the period beginning with the 1st day of July 1938, and ending with the 30th day of June 1939.

Memorandum of Sale means a Form 38—Tobacco 17 in the case of warehouse sales and a Form 38—Tobacco 18 in the case of non-warehouse sales.

Non-Warehouse Sale means a marketing other than a warehouse sale.

Operator means the producer who is in charge of the supervision and the conduct of the farming operations on the entire farm.

Person means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of a State or of the Federal Government. The term "person" shall include two or more persons having a joint or common interest.

Pound means that amount of tobacco which, if weighed in its unstemmed form and in the condition with respect to its moisture content in which it is usually delivered by a grower, would equal one pound standard weight.

Producer means a person who, as owner, landlord, tenant, sharecropper, or laborer, is entitled to share in the tobacco available for marketing from the farm, or in the proceeds of the marketing, under the provisions of his agreement relating to the production of the tobacco.

Regulations means these Regulations Pertaining to Flue-Cured Tobacco Marketing Quotas for the 1938–39 Marketing Year.

Share of Tobacco means that part of the tobacco available for marketing, or of the proceeds of the marketing thereof, which a producer is entitled to receive or retain under his agreement relating to the production of the tobacco. Such share shall be computed without regard to the time of passage of title under State law, and without deduction on account of any claim of any creditor.

Tobacco means flue-cured tobacco.

Tobacco Available for Marketing from a Farm means all tobacco produced on the farm, which was not marketed (or otherwise disposed

f) prior to the beginning of the 1938-39 marketing year; but shall ot include any such tobacco which was destroyed before its market-ng.

Tobacco Section means the Tobacco Section, Agricultural Adjust-nent Administration, United States Department of Agriculture, Washington, D. C.

Warehouse means a building or other place at which sales of tobacco t public auction, are regularly held by a warehouseman during the obacco marketing season.

Warehouseman means a person regularly engaged in the business of olding sales of tobacco, at public auction, at a warehouse, and during he tobacco marketing season.

A Warehouse Sale means a marketing by sale at public auction on warehouse floor.

SEC. 102. *Instructions and Forms.*—The Administrator of the Agri-ultural Adjustment Administration shall cause to be prepared and ssued with his approval such instructions and such forms as may be required to carry out these regulations.

SEC. 103. *Gender and Plural Meaning of Terms.*—Any term used in the masculine or in the singular shall also be construed or applied in the feminine or neuter gender, or in the plural person, wherever the context or application of such term so requires.

ARTICLE II.—FARM MARKETING QUOTAS

SECTION 201. *Establishment of Farm Marketing Quota.*—The quota for a farm shall be determined and established in accordance with the "Instructions for Determination of Flue-Cured Tobacco Farm Marketing Quotas for 1938" (Form 38—Tobacco 11) issued by the Secretary of Agriculture June 16, 1938, as amended. [Act, Sec. 313.]

SEC. 202. *Publication, Notice, Review.*—The publication, notice and review of quotas as established shall be in accordance with the "Regulations Governing (A) Applications and Hearings under Section 363 of Title III of the Agricultural Adjustment Act of 1938 Relating to Administrative Review of Marketing Quotas for Tobacco, Corn, Wheat, Cotton, and Rice Established Under said Title and (B) the Publication and Notice of such Quotas under Section 312 of said Act" (designated 38-AAA-2), issued by the Secretary of Agriculture.

SEC. 203. *Rights of Producers in Quota.*—Each producer having a share in the tobacco available for marketing from the farm shall be entitled to market, or to have marketed for him, under the quota his share of such tobacco; provided that if the quota is less than the total amount of such tobacco, each producer shall be entitled to market, or to have marketed for him, under the quota only that proportion of his share of such tobacco; which the quota is of the total quantity of such tobacco. [Act, Sec. 375.]

SEC. 204. *Successors in Interest.*—Any person who succeeds in whole or in part to the share of a producer in the tobacco available for marketing from the farm shall, to extent of such succession, have the same rights as the producer in the quota. [Act, Sec. 375.]

SEC. 205. *Marketing Card for Every Quota.*—There shall be issued for each farm to which a quota is allotted a marketing card (Form 38—Tobacco 14) as evidence of the number of pounds allotted to the farm as its quota; provided that the quota may be divided among such number of cards as the operator may request. Marketing cards shall be issued as provided in Article IV. [Act, Sec. 373 and 375.]

SEC. 206. *Marketings Charged against Quota.*—Marketings of tobacco shall be charged against the quota for the farm on which such tobacco was produced in the order in which the memoranda of sale (Forms 38—Tobacco 17 or 18) covering such marketings are issued; provided that a marketing shall not be charged against the quota to the extent that (as shown by the memorandum of sale or a Form 38—Tobacco 25) such marketing consists of tobacco (a) marketed subject to penalty, or (b) marketed solely for nicotine or other by-product uses, or (c) grown for experimental purposes only by a publicly owned experiment station. [Act, Sec. 314, 372, and 375.]

ARTICLE III.—MARKETING OF TOBACCO AND PENALTIES

SECTION 301. *A Memorandum of Sale to be Obtained for Every Marketing.*—Whenever any tobacco is marketed (whether the marketing is within the quota or not) the marketing card for the farm on which such tobacco was produced, together with the warehouse bill or other record of the marketing, shall be presented to the field assistant who is located most conveniently to the place of marketing for the purpose of obtaining a memorandum of sale (Form 38—Tobacco 17 in the case of warehouse sales and Form 38—Tobacco 18 in the case of non-warehouse sales) covering the tobacco marketed. A memorandum of sale shall then be issued by the field assistant; provided that, in the case of a non-warehouse sale which is subject to penalty, the memorandum shall not be issued unless the certificate on Form 38—Tobacco 18 as to the facts of the marketing is signed by the buyer and the producer (or by the producer alone if the marketing is made directly to a person outside of the United States). [Act, Sec. 373 and 375.]

SEC. 302. *Effect of Memorandum of Sale.*—A memorandum of sale shall identify the tobacco covered by the memorandum as tobacco the marketing of which is subject to penalty, or tobacco the marketing of which is free of penalty, as the memorandum, on its face, may show, and, if the marketing is subject to penalty, shall state the amount of the penalty upon the marketing.

It shall be the responsibility of the person liable for the payment of the penalty upon a marketing to check carefully the entries in the memorandum of sale issued to cover the marketing and the rec-

upon which such memorandum was based. Any errors should rought immediately to the attention of the field assistant for ction. The failure of the person liable for the payment of the lty to have any errors corrected will not relieve such person s payment of the penalty due upon the basis of the correct es. [Act, Sec. 314 and 375.]

c. 303. *Marketings Free of Penalty.*—Any marketing of tobacco be free of penalty, and shall be so identified by the memorandum le covering the marketing, to the extent that—

) Such tobacco is marketed within the quota for the farm on h such tobacco was produced, as shown by a valid marketing presented to obtain the memorandum of sale to cover such eting; provided that if the producer and the person liable for payment of the penalty shall (on Form 38—Tobacco 27) desig- any tobacco as tobacco marketed subject to penalty, then such cco shall be deemed to be marketed in excess of the quota, and memorandum of sale shall not identify such tobacco as marketed of penalty; or

) Such tobacco is marketed solely for nicotine or other by- uct uses and is so identified by a certificate made on Form 38– acco 25 by the by-product manufacturer and the producer; or) Such tobacco was grown for experimental purposes only by a icly-owned agricultural experiment station and is so identified certificate made on Form 38–Tobacco 25 by an authorized repre- ative of the experiment station and the producer.

Act, Sec. 314, 372 and 375.]

c. 304. *Marketings Subject to Penalty.*—(a) Any marketing of cco shall be subject to penalty, and shall be so identified by the orandum of sale covering the marketing, to the extent that the cco marketed cannot, as of the date of the issuance of the memo- lum of sale, be identified pursuant to section 303 of these regula- s as tobacco the marketing of which was free of penalty.

) If a memorandum of sale has not been issued to cover a market- of tobacco such marketing shall be deemed to be a marketing which subject to penalty. [Act, Sec. 314, 372 and 375.]

c. 305. *Amount of Penalty.*—The penalty upon any marketing obacco subject to penalty shall be 50 per centum of the market e of such tobacco on the date of marketing or 3 cents per pound, chever is higher. The sale price of any tobacco will be considered vidence of the market price on the date of marketing where ac- panied by a warehouse bill in the case of warehouse sales, or in the of non-warehouse sales where verified by the certificate (on Form Tobacco 18) of the buyer and the producer. [Act, Sec. 314.]

EC. 306. *Persons to Pay Penalty and Deduction from Purchase ce.*—(a) If the tobacco is marketed by the producer through a ehouseman (or other agent who performs services comparable to services performed by a warehouseman) the penalty shall be paid

by the warehouseman (or such other agent); but the warehouseman (or such other agent) may deduct an amount equivalent to the penalty from the purchase price paid to the producer.

(b) If the tobacco is marketed by the producer directly to any person outside the United States, the penalty shall be paid by the producer.

(c) If the tobacco is marketed by the producer in a manner other than as described in subsections (a) and (b) of this section, the penalty shall be paid by the person who acquires the tobacco from the producer; but an amount equivalent to the penalty may be deducted by the buyer from the price paid to the producer in case such tobacco is marketed by sale. [Act. Sec. 314.]

SEC. 307. *Payment of Penalties.*—Penalties upon the marketing of tobacco shall become due at the time of the marketing, and shall be paid by remitting the amount thereof to the Secretary of Agriculture (addressed for the attention of the Comptroller, Agricultural Adjustment Administration, Washington, D. C.), not later than the end of the calendar week next following the week in which the penalties became due. The remittance shall be accompanied,

(a) in the case of a warehouseman, by his report on Form 38-Tobacco 19, or

(b) in the case of a dealer, by his report on Form 38-Tobacco 22, or

(c) in the case of a producer, by his statement showing the number of pounds sold, the market price thereof and the person outside the United States to whom sold.

The remittance may be made by draft, money order, or check, payable to the order of the Secretary of Agriculture, but any such draft, money order, or check shall be received subject to payment at par. [Act, Sec. 314 and 372.]

SEC. 308. *Refund of Penalties.*—Whenever, pursuant to a claim filed with the Secretary of Agriculture within one year after payment to him of any penalty collected from any person pursuant to the Act, the Secretary of Agriculture finds that such penalty was erroneously, illegally, or wrongfully collected, the Secretary of Agriculture shall certify to the Secretary of the Treasury for payment to the claimant, in accordance with regulations prescribed by the Secretary of the Treasury, such amount as the Secretary of Agriculture finds the claimant is entitled to receive as a refund of such penalty. Any claim filed with the Secretary of Agriculture pursuant to this section shall be made in accordance with regulations to be prescribed by him. [Act, Sec. 372.]

ARTICLE IV.—MARKETING CARDS

SECTION 401. *Form of Card.*—The marketing card (Form 38-Tobacco 14) shall contain the signature, in ink or indelible pencil, of both the person authorized to issue the marketing card and the operator and a statement of the following:

(a) The State and county code and serial number of the farm for which the marketing card is issued;

(b) The number of the marketing card;
(c) The name and address of the operator;
(d) The amount of the marketing quota, of, if more than one marketing card is issued for the farm, the number of pounds for which the marketing card is issued, expressed in words on the face of the marketing card, and expressed in figures on the inside of the marketing card in column 1 opposite the word "Quota"; and
(e) The date on which the marketing card was issued. [Act, Sec. 373 and 375.]

SEC. 402. *Persons to issue card.*—The county committee shall designate one of its members or the Secretary of the County Agricultural Conservation Association as the person authorized to issue marketing cards for farms in the county. Only one person shall be designated by the committee for this purpose, and, in the absence of a specific designation, the Secretary of the County Agricultural Conservation Association shall be deemed to be the person designated. [Act, Sec. 375.]

SEC. 403. *Receipt for card.*—After the marketing card or cards have been duly prepared, they shall be delivered to the operator upon his receipt therefor. There shall be listed in the operator's receipt (Form 38–Tobacco 13), in the appropriate spaces thereon, (a) each marketing card issued for the farm and received by him and the number of pounds for which each such marketing card was issued, and (b) the names of all producers having a share in the tobacco available for marketing from the farm, and (c) the operator's estimate of the number of pounds of tobacco which will be available for marketing from the farm. The receipt shall be retained in the county office and shall be available to any producer having a share in the tobacco available for marketing from the farm, whether such person be listed on the receipt or not, either for inspection or for evidence as to any matter to which the receipt relates. [Act, Sec. 375.]

SEC. 404. *Entries on card.*—No person other than a field assistant, or a person designated by the Chief of the Tobacco Section, or by the county committee, shall make any entry (except for the writing by the operator of his signature) on the marketing card; but every entry on the marketing card should be carefully checked by each interested person, and any error should be immediately reported for correction to a person authorized to make entries on the marketing card. [Act, Sec. 375.]

SEC. 405. *Rights of Producers in card.*—Each producer who has a share in the tobacco available for marketing from the farm shall have the right to market, or to have marketed for him, under the marketing card issued for the farm the quantity of such tobacco which he is entitled to market, or to have marketed, under the quota for the farm, as provided in section 203 of these regulations. [Act, Sec. 375.]

SEC. 406. *Invalid Cards.*—(a) A marketing card shall be invalid if the marketing card was not issued or delivered in the form and

manner required in this Article; but such invalid marketing card shall become valid when returned to the county office and reissued and delivered in the required form and manner.

(b) A marketing card shall be invalid if the entries on the marketing card with respect to the amount, portion or balance of quota are incorrect, or if, because of the omission of any entry which should have been made on the marketing card, the balance of unused quota is incorrect; but if, subsequent to the time of invalidation, no marketings have been made and entered on the marketing card which would have been subjected to penalty if the correct entries had been shown on the marketing card, then such invalid marketing card shall become valid when the error has been corrected by a person authorized to make entries on the marketing card, or, in any other case, when the marketing card has been returned to the Tobacco Section and the necessary corrections have been made under its direction.

(c) A marketing card shall be invalid if the marketing card is credited with an amount of quota, any part of which has been transfererd in violation of the provisions of Article V; but such invalid marketing card shall become valid when the marketing card has been forwarded to the Tobacco Section and the necessary corrections have been made under its direction.

(d) A marketing card shall be invalid if any entry is made on the marketing card by a person not authorized to make such entry; but such invalid marketing card when returned to the county office shall be replaced by a new marketing card issued for an amount of quota determined as provided in section 409 of these regulations.

(e) The marketing card shall be invalid if it is presented and used to obtain a memorandum of sale covering the marketing of tobacco which was grown on a farm other than the farm for which the marketing card was issued; but such invalid marketing card shall become valid when returned to the Tobacco Section, and the necessary corrections have been made under its direction.

(f) The marketing card shall be invalid if it is lost or stolen; but if no entry has been made on the marketing card between the time of its loss or theft and its return to the operator of the farm for which the marketing card was issued, then such invalid marketing card shall become valid when it has been returned to the operator; or if any entry has been made on the marketing card between the time of its loss or theft and its return to the operator, then such invalid marketing card shall become valid when it has been returned to the Tobacco Section and the necessary corrections have been made under its direction; provided that if such lost or stolen marketing card is not found or returned to the operator prior to the issuance of a duplicate marketing card as provided in section 408 of these regulations, then such lost or stolen marketing card shall be permanently invalid.

(g) The marketing card shall be invalid if it is destroyed or becomes illegible; but a new marketing card shall be issued to replace

such destroyed or illegible marketing card as provided in section 408 of these regulations and such destroyed or illegible marketing card shall be permanently invalid. [Act, Sec. 375.]

SEC. 407. *Invalid Cards Suspended.*—(a) If any field assistant or the county office shall learn of or ascertain the invalidity of any marketing card, such person shall immediately notify the Tobacco Section of the code and serial number, and the name of the operator of the farm for which the marketing card was issued, and of the facts causing the invalidity of the marketing card; unless the marketing card is then in the possession of such person, in which case he shall retain and make disposition of the marketing card in accordance with the provisions of section 406 of these regulations. Upon receipt of such notice the Tobacco Section shall notify all field assistants, the operator of the farm, and the county committee of the county where the farm is located, that the marketing card has been suspended for invalidity.

(b) If any such marketing card shall thereafter come into the possession of any field assistant or the county office, such person shall retain and make disposition of the marketing card in accordance with the provisions of section 406 of these regulations. [Act, Sec. 375.]

SEC. 408. *Duplicate Card to Replace Card Which is Lost, Stolen, Destroyed, or Becomes Illegible.*—Whenever any marketing card is lost, stolen, destroyed, or becomes illegible, the county office shall be notified of the code and serial number, and the name of the operator of the farm for which the marketing card was issued, the number of the marketing card, and, if known, the amount of the unused quota evidenced by the marketing card. Such notice shall be in writing, subscribed by the operator of the farm for which the marketing card was issued. If, in the case of a lost or stolen marketing card, the producer is at or near a warehouse where he believes the loss or theft occurred, he shall also notify the field assistant at the warehouse.

When such notice has been given to the county office and a period of 2 weeks has elapsed from the time of its receipt of such notice, a duplicate marketing card may be issued by the county office for an amount of quota determined as provided in section 409 of these regulations.

Such marketing card shall bear the same number as the number of the marketing card which was lost, stolen, destroyed, or became illegible, and shall have written under the marketing number, in large letters, the word "duplicate." The person issuing the marketing card, shall sign the card in the space provided for his signature and shall also sign below the word "duplicate." [Act, Sec. 375.]

SEC. 409. *Amount of Quota for Duplicate Cards.*—Whenever the county office issues a duplicate marketing card for any marketing card which has become invalid the amount of quota for which such

card shall be issued shall equal whichever of the following amounts is the smaller:

(a) The unused quota as stated by the operator; or

(b) The unused quota as determined by subtracting from the quota for the farm the total marketings from the farm (as shown by memoranda of sale) and the amount of unused quota shown on all other marketing cards issued for the farm; provided that, if no amount is stated by the operator, the amount for which the card shall be issued shall equal the amount determined under (b) above. [Act, Sec. 375.]

SEC. 410. *Replacement of Old Card.*—Whenever, on any card, the space for recording marketings becomes inadequate, such marketing card shall be surrendered to the county office, and a new marketing card shall be issued for the amount of the quota remaining unused on the marketing card so surrendered. An appropriate entry shall be made on the surrendered marketing card showing that a new marketing card has been so issued. [Act, Sec. 375.]

ARTICLE V—TRANSFER OF QUOTAS

[Act, Sec. 313(d)]

SECTION 501. *Transfer Authorized.*—A Transfer of quota may be made to another farm only to the extent and in the manner provided in this Article.

SEC. 502. *Amount Transferable.*—The quota for a farm may be transferred only to the extent and in the event that such quota exceeds the sum of (a) the number of pounds of tobacco available for marketing from the farm which have not been marketed (or otherwise disposed of) at the time of the proposed transfer, (b) the number of pounds of tobacco marketed from the farm solely for nicotine or other by-product uses, and (c) the number of pounds of tobacco marketed from the farm which were grown for experimental purposes only by a publicly owned agricultural experiment station.

SEC. 503. *Place and Person to Make Transfer.*—Transfers may be made at a warehouse by a field assistant or at the county office by a person authorized to make transfers.

SEC. 504. *Transfer direct between Operators or through Warehouseman.*—Transfers of quota may be made as a result of direct negotiation between the operators of the farms concerned in the transfer; or, subject to the provisions of this Article, an operator may authorize a warehouseman to act as his agent to arrange a transfer of quota.

If the operator of a farm desires to have a warehouseman act for him in arranging a transfer of quota from the farm, the operator shall deliver to the warehouseman his authorization (Form 38—Tobacco 23) and the marketing card for the farm from which the transfer is to be made. Such warehouseman shall then enter in his transfer record book (Form 38—Tobacco 24) the number of pounds of quota to be transferred, and shall present the marketing card and

the authorization to a field assistant who shall charge the marketing card with the number of pounds to be transferred by making appropriate entries on the card. The marketing card shall then be returned to the warehouseman, and shall be retained by him until an examination of his transfer records has been made by an authorized representative of the Agricultural Adjustment Administration.

SEC. 505. *How Transfer Made.*—(a) If the transfer is to be made as a result of direct negotiation between the operators of the farms concerned in the transfer, the marketing cards for the respective farms, together with the authorization (Form 38—Tobacco 23) of the operator of the farm from which the transfer is to be made, shall be presented to a representative of the Agricultural Adjustment Administration authorized to make the transfer. Such representative shall then charge the marketing card for the farm from which the transfer is to be made, and credit the marketing card for the farm to the transfer is to be made, with the number of pounds of quota transferred, by making appropriate entries on the respective marketing cards.

(b) If the transfer is to be made through a warehouseman, the warehouseman shall charge on his transfer record book the number of pounds of quota to be transferred, and shall then present his book to the field assistant in lieu of the presentation of an authorization and marketing card for the farm from which the transfer is to be made. The field assistant shall then credit the marketing card for the farm to which the transfer is made with the number of pounds transferred by making appropriate entries on such card.

SEC. 506. *AAA Record of Transfer.*—A representative of the Agricultural Adjustment Administration who makes any transfer entries on a marketing card shall make a record thereof on Form 38—Tobacco 15.

SEC. 507. *Consideration for Transfer.*—(a) If a transfer is made as a result of direct negotiation between the operators of the farms concerned in the transfer, the consideration for the transfer shall be whatever consideration is agreed upon by the operators of the respective farms; provided that no such transfer shall be made for a consideration which is less than 5 cents per pound for each pound of quota transferred unless all the producers on the farm from which the quota is to be transferred have consented thereto.

(b) If a warehouseman acts as agent in connection with a transfer, the consideration for the transfer shall be a sum computed at the rate of, and at no other rate than, 5 cents per pound for each pound of quota transferred, and shall be paid by the warehouseman to the operator of the farm from which the transfer was made not later than the day next following the making of the transfer.

SEC. 508. *Producers' Rights in Transferred Quota.*—Each producer having a share in the tobacco available for marketing from the farm which has not been marketed at the time of the transfer shall be entitled to market, or to have marketed for him, under the transferred

quota that proportion of his share of such tobacco which his co
tion to the consideration for such transfer is of the total conside
for the transfer.

SEC. 509. *Distribution of Consideration.*—The consideratio
ceived by the operator for the transfer of any portion of the
shall be divided by him among the producers on the farm in p
tion to their shares in the tobacco available for marketing fro
farm, unless all such producers agree among themselves to a dif
division of the consideration; provided that, if the quota trans
is quota which was not allotted to the farm but was acquired by
fer, then the consideration shall be divided by the operator a
such producers on the farm who contributed to the payment o
consideration for the transfer in the proportion which their
tributions were of the total consideration for the transfer, unless
producers agree among themselves to a different division o
consideration.

SEC. 510. *Conditions of Warehouseman's Agency.*—No wareh
man shall act as agent for the purpose of arranging transfe
quota; unless

(a) He has executed an agreement on Form 38—Tobacco 26
such agreement has been approved by the Chief of the Tobacco
tion;

(b) With respect to each transfer, he has been authorized in
ing to arrange the transfer (Form 38—Tobacco 23) by the ope
of the farm from which the transfer is to be made; and

(c) His right to act as agent has not been terminated under
provisions of this Article.

SEC. 511. *Warehouseman's Charge for Services.*—A warehous
acting as agent may charge the operator of the farm to whic
arranges a transfer of quota a sum of not exceeding $1 for his ser
in connection with each transfer to the farm; provided that all q
transferred to a farm at the same time, whether transferred
one or more farms, shall be considered as one transfer. No
charge shall be made by a warehouseman for his services in co
tion with a transfer.

SEC. 512. *Warehouseman's Record of Transfers.*—Every w
houseman who acts as agent in connection with the transfer of
keting quotas shall keep complete and accurate record relative the
on a transfer record book (Form 38—Tobacco 24). The tra
record book shall be and remain the property of the Secretar
Agriculture, and shall be available at all times for inspection
representative of the Agricultural Adjustment Administration
thorized to make such inspection by the Chief of the Tobacco Sec
and upon request by the Chief of the Tobacco Section shall be im
diately surrendered to the Secretary of Agriculture by forwar
it to the Tobacco Section, or by delivering it to a representativ
the Agricultural Adjustment Administration authorized by the C
of the Tobacco Section to receive such transfer record book.

SEC. 513. *Order of Transfer.*—A warehouseman who acts as agent shall arrange for the transfer of quotas to farms in the order in which requests for such transfers, together with the marketing cards upon which the transfers are to be entered are received by him from producers; provided that he may require requests to be accompanied by a deposit of the consideration (i. e., 5 cents per pound of each pound of quota requested). For the purpose of fixing the order of priority, the warehouseman shall enter in his transfer record book (Form 38—Tobacco 24) in the order in which requests for quota are received by him, the name of the operator and the county code and farm serial number of the farm to which the transfer is requested, the amount of the requested transfer, the amount of the deposit, if any, received.

SEC. 514. *Termination of Agency.*—The warehouseman's right to act as agent shall be terminated by

(a) Voluntary surrender of the right, or

(b) Violation of any provision of this Article.

SEC. 515. *Effect of Voluntary Termination.*—If the termination is voluntary on the part of the warehouseman, he shall immediately notify the Chief of the Tobacco Section that he no longer desires to act as agent; and such warehouseman shall proceed as expeditiously as possible to settle all matters relating to the agency.

SEC. 516. *Effect of Involuntary Termination as to Warehouseman.*—If the termination is made by his violation of any of the provisions of this Article, the warehouseman shall immediately forward his transfer record book (Form 38—Tobacco 24) to the Tobacco Section and any interest which the warehouseman may have in any cards then on hand in connection with transfers shall be forfeited and such cards and any authorizations for transfer (Form 38—Tobacco 23) relating thereto shall be turned over forthwith to the field assistant to be forwarded to the Tobacco Section. The Tobacco Section shall cause such publication of the fact of termination as appears necessary to protect the interests of producers.

ARTICLE VI—RECORDS AND REPORTS

[Act, Sec. 373]

SECTION 601. *Warehouseman's Record of Marketing.*—Every warehouseman shall keep such records as will enable him to furnish the Secretary of Agriculture a report of the following information with respect to each sale or resale of tobacco made on his warehouse: The name of the seller, the name of the purchaser, the date of sale, the number of pounds sold, the sale price, and, in the case of a sale for a producer, the name of the operator of the farm on which the tobacco sold was produced, the amount of the penalty, and what part of the amount of the penalty was deducted by him from the price paid the producer.

SEC. 602. *Warehouseman's Record of Transfers.*—Every warehouseman who acts as agent in connection with transfers of quota, shall,

as required in Section 512 of these regulations, keep complete and accurate records relative thereto on Form 38—Tobacco 24.

SEC. 603. *Reports from Warehouseman.*—Every warehouseman shall report daily on Form 38—Tobacco 19, on Form 38—Tobacco 20, and on Form 38—Tobacco 21, those transactions made in his warehouse which are required to be shown on such forms. The report on Form 38—Tobacco 20 shall be delivered to the field assistant at the warehouse at the end of the day for which the report is made. The reports on Form 38—Tobacco 19 and Form 38—Tobacco 21 shall be sent to the Comptroller, Agricultural Adjustment Administration, Washington, D. C., not later than the end of the day next following the day for which the report is made; provided that, if he so elects, the warehouseman may accumulate the reports on Form 38—Tobacco 19 for one calendar week and make his return thereof on or before the end of the calendar week next following the week for which the reports were made.

Every warehouseman shall make such additional reports to the Secretary of Agriculture as the Chief of the Tobacco Section may, from time to time, request.

SEC. 604. *Records of Dealers.*—Every dealer shall keep such records as will enable him to furnish the Secretary of Agriculture a report of the following information with respect to each purchase (or other acquisition) of tobacco and each sale (or other disposition) of tobacco made by him: The date when and the place where made, the number of pounds of tobacco involved, the price (or other consideration) paid or received, the name and address of the person from which acquired or to whom the disposition was made (or if acquired or disposed of by sale at auction on a warehouse floor, the name of such warehouse), and in case the tobacco is acquired from a producer, the name of the operator of the farm on which the tobacco marketed was produced, the amount of the penalty, and what part of the amount of the penalty was deducted by him from the price paid the producer.

SEC. 605. *Reports from Dealers.*—Except as otherwise provided in section 606 of these regulations, every dealer shall make a daily report on Form 38—Tobacco 22, of all purchases and sales of tobacco made by him on the day for which the report is made. The reports shall be forwarded to the Comptroller, Agricultural Adjustment Administration, Washington, D. C., not later than the end of the calendar week next following the week for which such daily reports are made.

Every dealer shall make such additional reports to the Secretary of Agriculture as the Chief of the Tobacco Section may, from time to time, request.

SEC. 606. *Exception for Certain Dealers.*—Any dealer, who does not purchase or otherwise acquire tobacco except at warehouse sale and who does not resell, prior to the redrying thereof, more than 15 per cent of the tobacco purchased by him, shall not be subject to the provisions of section 605 of these regulations; but every such dealer

shall make such reports to the Secretary of Agriculture as the Chief of the Tobacco Section may, from time to time, request.

SEC. 607. *Records and Reports of Redryers, etc.*—Every person engaged in the business of redrying, prizing or stemming tobacco for producers shall keep such records as will enable him to furnish the Secretary of Agriculture a report of the following information with respect to each lot of tobacco received by him: The date of receipt of the tobacco, the number of pounds received, the purpose for which the tobacco was received, the name and address of the person from whom the tobacco was received (and, if received from a producer, the name and address of the operator, and the code and serial number, of the farm on which the tobacco was grown), the amount of any advance made by him on the tobacco, and the disposition of the tobacco.

Every such person shall make such reports to the Secretary of Agriculture as the Chief of the Tobacco Section may, from time to time, request.

SEC. 608. *Separate Records and Reports from Persons acting in more than one capacity.*—Any person, who is required to keep any record or make any report as (a) warehouseman, (b) dealer, or (c) processor, or as (d) a person engaged in the business of redrying, prizing or stemming of tobacco for producers, and who engages in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged, to the same extent as to each such business as if he were engaged in no other business.

SEC. 609. *Failure to keep record or make report.*—Any warehouseman, processor or common carrier of tobacco, or person engaged in the business of purchasing tobacco from producers, or person engaged in the business of redrying, prizing, or stemming tobacco for producers, who fails to make any report or keep any record as required under this Article or who makes any false report or record, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500.

SEC. 610. *Records open to inspection.*—For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, the Secretary of Agriculture is authorized by the Act to examine such books, papers, records, accounts, correspondence, contracts, documents and memoranda as he has reason to believe are relevant and are within the control of any warehouseman, dealer, processor, common carrier, or person engaged in the business of redrying, prizing, or stemming tobacco for producers.

SEC. 611. *Information Confidential.*—All data reported to or acquired by the Secretary of Agriculture pursuant to the provisions of this Article shall be kept confidential by all officers and employees of the Department of Agriculture and only such data so reported or acquired as the Secretary of Agriculture deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under Title III of the Act.

Exhibit 6 (a)

CERTIFICATE OF EACH TRANSFER TO FARM

Each undersigned Field Assistant (or person authorized to sign for the county office) certifies that a transfer of marketing quota as indicated in the line immediately above his signature, was made to the farm for which this marketing card was issued.

(Date this transfer) (Pounds this transfer)

(Signature of A. A. A. representative)

(Date this transfer) (Pounds this transfer)

(Signature of A. A. A. representative)

(Date this transfer) (Pounds this transfer)

(Signature of A. A. A. representative)

(Date this transfer) (Pounds this transfer)

(Signature of A. A. A. representative)

Form 38–Tobacco 14 U. S. D. A. A. A. A. Tobacco Section. June 1938.

(Code and serial number)

(Card number)

1938–39 MARKETING CARD

(Flue-Cured Tobacco)

This is to certify that the marketing quota (or the portion of the marketing quota for which this card is issued) for the farm identified by the code and serial number above and operated in 1938 by—

(Name of operator)

(Address)

is _____
(Write in words)

pounds of ~~flue~~-cured tobacco.

(Date issued) (Signature of issuing agent)

(Signature of operator)

Loss of Card.—If this card is lost, stolen, or destroyed, notify county office immediately. If found, please return to nearest county office or to the operator.

Entries on Card.—No person other than a representative of the A. A. A. is authorized to make any entry on this card, but every entry hereon should be carefully checked by each person interested in the marketings entered, and any error immediately reported to the A. A. A. representative for correction.

	Pounds (1)	Serial No. of Memo. of Sale and Date (2)
Quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		

(Make no entries in this space because of fold)

Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota		
Pounds sold		
Unused quota forwarded		To card number

Exhibit 6 (b)

Form 38—Tobacco 13. U. S. Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. July 1938.

(Code and serial number)

Operator's Receipt for Marketing Card

The undersigned operator of the farm identified by the county code and serial number shown above hereby certifies that:

1. The marketing card(s) described below, covering a total number of pounds of tobacco equal to the marketing quota for the farm, has (have) been received by him for the use of all the producers who have a share in the tobacco (or the proceeds thereof) available for marketing from the farm during the 1938–39 marketing year, so that each such producer shall be able to market under the marketing quota of the farm his share of such tobacco, or, if the quota is less than the total amount of such tobacco, so that each such producer shall be able to market under said quota that proportion of his share of such tobacco which the farm marketing quota is of the total quantity of such tobacco.

Marketing card No.	Pounds quota	Marketing card No.	Pounds quota	Marketing card No.	Pounds quota

2. All the producers, other than himself, who are entitled to share in the tobacco (or the proceeds thereof) available for marketing from the farm during the 1938–39 marketing year are as follows:

Name of producer	Name of producer	Name of producer

3. He fully understands that, under the regulations of the Secretary, (*a*) the marketing quota for the farm can be transferred only in the event and to the extent that the tobacco available for marketing from the farm at the time of the proposed transfer is less than the part of the farm marketing quota remaining unused at such time; (*b*) no transfer can be made at less than 5 cents per pound, except with the knowledge and consent of all producers on the farm; (*c*) no transfer can be made at a price other than 5 cents per pound, except through direct negotiation between himself and the operator of the farm to which such transfer is to be made; and (*d*) the consideration received for the transfer of any part of the farm marketing quota is required to be divided among producers on the farm in the proportion which their shares in the tobacco available for marketing from the farm during the 1938–39 marketing year is of the total amount of such tobacco, unless all such producers agree among themselves to a different division of the consideration.

4. He estimates that _____ pounds of tobacco will be available for marketing from the farm in the 1938–39 marketing year.

_____ (Date)

_____ (Signature of operator)

The undersigned certifies that the marketing card(s) described above has (have) been delivered by me to the operator named above and the total number of pounds covered by such card(s) equals the marketing quota established for the farm.

_____ (Date)

_____ (Representative of Agricultural Adjustment Administration who issued card(s))

Exhibit 6 (c)

Form 38—Tobacco 27. U. S. Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. July 1938.

(Serial number of memorandum of sale) _____ (Code and serial number of farm) _____

REQUEST FOR SALE SUBJECT TO PENALTY

The undersigned certify that the quantity of tobacco shown on the above-numbered memorandum of sale as subject to penalty has been identified by them as tobacco the marketing of which was subject to penalty and that they have requested that a penalty be imposed upon the marketing of such tobacco.

_____ (Date) _____ (Signature of producer)

_____ (Date) _____ (Signature of warehouseman or buyer, or authorized representative)

Exhibit 6 (d)

Form 38—Tobacco 17. U. S. Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. June 1938. No. 1485070.

MEMORANDUM OF WAREHOUSE SALE

(Flue-Cured Tobacco)

It shall be the responsibility of the warehouseman to check carefully the entries in this memorandum and the records upon which such entries were based. Any errors should be brought immediately to the attention of the field assistant for correction. The failure of the warehouseman to have any errors corrected will not relieve the warehouseman of liability for the payment of the penalty computed upon the basis of the correct entries.

	Sale within quota		Sale subject to penalty		
(Date of sale)	(Pounds)	$ (Gross price)	(Pounds)	$ (Gross price)	$ (Penalty)

_____ (Name of operator of farm) _____ (Warehouse and town)

_____ (Code and farm serial number) _____ (Signature of field assistant)

Exhibit 6 (e)

Form 38—Tobacco 18. U. S. Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. July 1938. N-77.

Memorandum of Nonwarehouse Sale

It shall be the responsibility of the person liable for the payment of the penalty to check carefully the entries in this memorandum and the records upon which such entries were based. Any errors should be brought immediately to the attention of the field assistant for correction. The failure of the person liable for the payment of the penalty to have any errors corrected will not relieve such person of the payment of the penalty due upon the basis of the correct entries.

	WITHIN QUOTA		SUBJECT TO PENALTY		
(Date of sale)					
(Code and Farm Serial No.)	(Pounds)	$ (Gross price)	(Pounds)	$ (Gross price)	$ (Penalty)

(Name of operator of farm) (Name and address of buyer)

(Date) (Signature of Field Assistant)

Certificate of Buyer and Producer [1]

For the purpose of furnishing proof of marketing and a basis for computation of the amount of penalty, if any, due to the United States on the marketing of tobacco described above, we, the undersigned, do hereby severally certify that the buyer purchased of the producer, and the producer sold to the buyer the number of pounds of tobacco shown above, for the sum stated above; that said sale was a bona fide sale; that said sum was the entire consideration therefor; that no agreement has been, or will be, made to pay, and that the buyer will not pay, to the producer any additional sum or consideration whatsoever for said tobacco; that the said sale was made on the date above stated; and that an amount equivalent to the amount of penalty {was / was not} [2] deducted from the price paid to the producer.

Dated _____ at _____

Buyer's Internal Revenue Registration Number			
Bus.	No.	Dist.	State

(Signature of witness) (Signature of buyer)

(Signature of witness) (Signature of producer)

[1] This certificate is required to be executed only in connection with a marketing other than a warehouse sale, which is subject to penalty.
Any false certification will be subject to the provisions of the U. S. Criminal Code, and to the criminal provisions of Section 373 (a) of the Agricultural Adjustment Act of 1938.

[2] Strike out "was" or "was not" whichever is inapplicable.

Exhibit 6 (f)

Form 38—Tobacco 25. U. S. Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. July 1938.

(Serial No. of Memo of Sale) (Code and Serial No. of Farm)

Certificate of Exemption

The undersigned certify that the marketing of the tobacco identified in the above-numbered memorandum of sale is exempt from penalty because (strike out whichever of the following statements is inapplicable).

(a) such tobacco was grown for experimental purposes only by the publicly owned agricultural experiment station named below.

(b) such tobacco was purchased by the tobacco by-products manufacturer named below for use solely for nicotine or other by-product uses.

(Name of Experiment Station or Tobacco By-products Manufacturer)

(Date) By (Signature of authorized representative and title)

(Date) (Signature of Producer)

Exhibit 6 (g)

Form 38—Tobacco 23. United States Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. July 1938.

Authorization for Transfer

The undersigned operator of the farm identified by _____
(Code and Serial No.)
hereby authorizes the transfer of _____ pounds from the marketing quota for the farm and certifies that (under Section 502 of the Regulations) said number of pounds of quota are available for transfer. He further certifies as follows:

(a) If he has authorized a warehouseman to act as his agent for the purpose of negotiating said tranfer, that said warehouseman is named below.

(b) If such transfer is being made as the result of direct negotiation between the undersigned operator and the operator of the farm to which the transfer will be made and the consideration to be received therefor is less than 5c per pound, that all producers having an interest in such quota have consented to such transfer.

Date _____, 193__.

(Signature of Operator)

(Name of warehouseman authorized to act as agent of operator)

Exhibit 6 (h)

38—Tobacco 26. United States Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. July 1938.

Warehouseman's Transfer Agency Agreement

_____ _____
(Name of warehouse) (Name of market)

In consideration of the privilege, granted to him by the Secretary of Agriculture of the United States, of acting as agent for the purpose of arranging transfers of farm marketing quotas under Regulations Pertaining to Flue-Cured Tobacco Marketing Quotas for the 1938–39 Marketing Year, the undersigned warehouseman agrees, with each and every producer of tobacco for whom he hereafter undertakes to act as agent for the purpose of arranging a transfer of quota, as follows:

(1) That, in arranging any transfer of quota, he will charge the operator of the farm to which the quota is transferred, and will pay to the operator of the farm from which the transfer is made, a sum computed at the rate of, and at no other rate than, 5¢ per pound for each pound of quota transferred; settlement to be made with each operator from whose farm a transfer has been made immediately following, and to the extent of, each transfer.

(2) That, in arranging any transfer, he will not make any charge for his services other than a charge made to the operator of the farm to which the transfer has been made, of a sum not exceeding $1.00 for each transfer, which charge shall cover all services for any transfer made to the said farm at the same time, whether transferred from one or more farms.

(3) That he will arrange for transfers of quotas to farms in the order in which requests and cards for such transfers are received by him; provided that he may require requests to be accompanied by a deposit of the consideration (i. e., 5 cents per pound of each pound of quota requested).

Dated _____ _____
(Signature of warehouseman)

By _____
(Title)

Exhibit 6 (i)

Form 38—Tobacco 15. U. S. Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. July 1938.

Record of Quota Transfer

The undersigned representative of the A. A. A. hereby certifies that a transfer of _____ pounds of quota from the farm operated by

_____ and identified by _____ (or
(Name of Operator) (Code and serial number)
from Warehouseman's Record of Transfers, book No. _____,
_____), was made on _____ at _____
(Name of warehouse) (Date)
_____ to the farm operated by _____
(Warehouse and town or county office)
_____ and identified by _____ (or to ware-
(Name of operator) (Code and serial number)
houseman's Record of Transfers, book No. _____, _____)
(Name of warehouse)

_____ _____
(Signature of A. A. A. representative) (Title)

NOTE.—This record of transfer is to be made in Duplicate. If the transfer is made from one farm to another, one copy will be filed at the county office(s) with other records for each farm involved in the transfers. If the transfer is made from or to a Warehouseman's Record of Transfers book, one copy will be retained by the Tobacco Section and one copy will be filed at the county office with the records for the farm involved in the transfer.

Exhibit 6 (j)

(Omitted by agreement as having been substantially covered by other exhibits.)

Exhibit 7

Form 38—Tobacco 11 (Part 1). United States Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. Washington, D. C.

INSTRUCTIONS FOR DETERMINATION OF FLUE-CURED TOBACCO FARM MARKETING QUOTAS FOR 1938

(Issued pursuant to the Agricultural Adjustment Act of 1938 as amended.)

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Part 1. Procedure for Determination of Flue-Cured Tobacco Marketing Quotas

Section 1. *General Outline of Method of Establishing Farm Marketing Quotas.*—This section outlines, in general terms, the procedure for establishing flue-cured tobacco farm marketing quotas in accordance with the provisions of the Agricultural Adjustment Act of 1938. The term "tobacco" as used in these instructions means flue-cured tobacco unless otherwise indicated.

A. *Farms for Which Quotas Will be Established.*—A marketing quota will be established for each farm on which tobacco is produced in the year 1938. For the purpose of establishing farm marketing quotas, farms are divided into two general classes:

1. *Old Farms.*—Farms producing tobacco in 1938 and on which tobacco also was produced in one or more of the four years, 1934-37, will be referred to as "old farms". An old farm will also be referred to as a "large farm" if for the three years, 1935–37, the average tobacco production and diversion was more than 3,200 pounds, and as a "small farm" if the three-year average was 3,200 pounds or less. Diversion means the normal production of the acres on the farm diverted from the production of tobacco during the three years 1935–37, under agricultural adjustment or conservation programs.

2. *New Farms.*—Farms on which tobacco is produced in the year 1938 for the first time since the year 1933 will be referred to as "new farms".

B. *Basis for the Establishment of Farm Marketing Quotas*—1. *Old Farms.*—(a). Quotas for all old farms will be established by allotting the State marketing quota among such farms on the basis of the following factors:

(1) past marketings of tobacco, making due allowance for abnormal weather conditions and plant diseases; (2) land, labor, and equipment available for the production of tobacco; (3) crop-rotation practices; and (4) the soil and other physical factors affecting the production of tobacco. The quota for an old farm will not be less than the smaller of 3,200 pounds or the three-year (1935–37) average tobacco production and diversion.

(b) An addition to the State quota, of a number of pounds not exceeding four percent of such quota, will be used in the State to increase quotas for old farms which are inadequate in view of the past production of tobacco on the farm.

2. *New Farms.*—Marketing quotas will be established for new farms by the allotment among such farms of a number of pounds equal to three percent of the national marketing quota of 705,000,000 pounds. These allotments will be made upon the basis of the same factors as for old farms, except past marketings of tobacco. The marketing quota established for a new farm cannot be more than 75 percent of the quota which would be established for an old farm which was similar with respect to such factors.

C. *Determination of Normal Marketings.*—The first step in the procedure for the establishment of farm marketing quotas will be to determine for each farm on which tobacco is produced in 1938 a "normal marketings" based upon the same factors as are required to be taken into consideration in establishing farm marketing quotas (Sec. II). The normal marketings for old farms will be the sum of (1) seventy-five percent of the "adjusted past marketings" which will be calculated so as to take into account the marketings from the farm during the three years 1935–37 (making due allowance for abnormal weather conditions and plant diseases) and the soil and other physical factors affecting the production of tobacco on the farm (Sec. II, A), and (2) 25 percent of the marketings indicated by the land, labor and equipment available for the production of tobacco on the farm (Sec. II, B). The normal marketings for new farms will be 50 percent of the marketings indicated by the land, labor and equipment available for the production of tobacco on the farm (Sec. II, B). However, the normal marketings for a farm computed as indicated above, will be subject to certain limitations (Sec. III). These limitations will be measured by a factor representing the acreage necessary to permit crop-rotation practices on the farm (Sec. III, B) and also by the 1938 acreage of tobacco on the farm (Sec. III, A), the land, labor and equipment available for the production of tobacco on the farm in 1938 (Sec. III, C), and the past marketings of tobacco (Sec. III, D).

D. *Establishment of Farm Marketing Quotas on the Basis of Normal Marketings.*—Farm marketing quotas will be established by adjusting normal marketings in the following manner:

1. *Old Farms.*—The total of the normal marketings of all old farms in each State will be brought within the State marketing quota (or the balance of such quota remaining after deduction therefrom of

the amount, if any, reserved for adjustments as provided in Section IV (D)) by adjusting the normal marketings of each old farm by a uniform percentage. The normal marketings for old farms, after being thus adjusted, will be subject to such further adjustment as is necessary in order to provide each such farm with a "minimum quota" and at the same time keep the total of the quotas for all such farms equal to the State marketing quota after deduction therefrom of the amount, if any, reserved pursuant to section IV (D). The farm marketing quota will be the normal marketings adjusted as indicated above, plus such additions as may be made thereto from the 4 percent addition to the State quota (Sec. IV (C)), and from the amount reserved from the State quota (Sec. IV (D)).

2. *New Farms.*—The total of the normal marketings of all new farms in the United States will be brought within the amount represented by three percent of the national quota of 705,000,000 pounds by adjusting the normal marketings of each new farm by a uniform percentage. The normal marketings for new farms, after being thus adjusted, will be subject to such further adjustment as is necessary in order to provide each new farm with a "minimum quota" and at the same time keep the total of the quotas for all new farms within the amount reserved from the national quota for new farms. Normal marketings for a new farm, as finally adjusted, will constitute the farm marketing quota (Sec. IV, B).

E. *Detailed Procedure.*—The detailed procedure for the establishment of farm marketing quotas, in the manner outlined above, is set forth in the following sections of these instructions:

SECTION II. *Procedure for Calculation of Normal Marketings.*—The data for use in calculating normal marketings will be collected and tabulated by county offices in accordance with Sections VI to IX of those instructions.

The normal marketings for each old farm will be seventy-five percent of the adjusted past marketings as calculated pursuant to subsection A below, plus twenty-five percent of the marketings for the farm indicated by land, labor, and equipment, as calculated pursuant to subsection B below. The normal marketings for each new farm will be 50 percent of the marketings indicated by the land, labor, and equipment available for the production of tobacco on the farm. If necessary, adjustments of the normal marketings for a farm will be made pursuant to Section III below.

A. *Calculation of Adjusted Past Marketings.*—(1) The adjusted past marketings for any farm will be the largest of the following three items:

(a) 33⅓ percent of the total harvested and diverted acreage in the three years, 1935–37, multiplied by the farm yield;

(b) 40 percent of the total harvested and diverted acreage in the two years of the three years, 1935–37, in which such acreage was the highest, multiplied by the farm yield;

(c) 60 percent of the highest harvested and diverted acreage in any one of the three years, 1935–37, multiplied by the farm yield; *Provided*, that, if, for any farm, the average of the marketings from the farm and of the normal production of tobacco on the diverted acreage during the three years, 1935–37, is greater than any of the items (a), (b), or (c) above, and records satisfactorily to the community and county committees have been presented in support of all marketings, reported by the operator, the three-year average of marketings and diversion shall be used in lieu of items (a), (b), or (c) above.

(2) The harvested acreage shall be the acreage actually harvested on the farm, except that if the community and county committees find that, because of flood, drought, hail, or blue-mold, the harvested acreage of tobacco for the farm in any of the three years, 1935–37, was less than 60 percent of the base acreage established for the farm such year under the agricultural adjustment or conservation program the harvested acreage for such year shall be adjusted to 70 percent of such base acreage.

(3) The farm yield shall be the 1935 yield per acre for the farm, if such yield is known, subject to the following adjustments:

(a) If the 1935 yield per acre for the farm is more than 300 pounds below the 1935 county average yield,[1] the farm yield shall be fixed at 300 pounds below the 1935 county average yield unless adjusted upward as provided in (c) below.

(b) If the 1935 yield per acre for the farm is more than 300 pounds above the 1935 county average yield [1] the farm yield shall be fixed at 300 pounds above the 1935 county average yield [1] or, if larger, at the average yield per acre for the farm in the three years, 1935, 1936, and 1937.

(c) If the committee finds that because of flood, drought, hail, or blue-mold the 1935 yield per acre for any farm was materially lower than the yield which otherwise would have been obtained, the committee shall assign as the farm yield that yield which it finds to be normal for the farm, taking into consideration the yield on farms in the locality which have similar types of soil; provided that such yield shall not be more than the higher of the 1936 or 1937 yield per acre for the farm nor more than the maximum yield which could be established under (b) above.

If the 1935 yield per acre for a farm is not known, the 1935 community average yield per acre [1] shall be used as the farm yield.

If the 1935 county or community average yield cannot be established because the 1935 yields for farms in such county or community are not known, the average yield for the nearest county or com-

[1] The 1935 community average yield and the 1935 county average yield shall be determined by calculating the simple average of the 1935 tobacco yields per acre for a representative sample of tobacco farms in each community and in the county. A "representative sample" shall be 20 percent or more of the tobacco farms from each of the communities in the county. The farms included in the sample shall consist, as far as practical, of alternate farms (i. e., every third, fourth, or fifth farm listed on Form 38—Tobacco 10) in each community.

munity which the State committee finds to be most similar with respect to type of soil, topography, and productivity to such county or community, as the case may be, shall be used. If, for any community, the committee finds that the 1935 average yield was reduced materially because of flood, drought, hail, or blue-mold, the county committee shall make recommendations to the State committee with respect to an adjusted yield for the community and the State committee shall establish a 1935 yield for the community on the basis of the recommendations of the county committee and other available information.

B. *Calculation of Marketings Indicated by Land, Labor, and Equipment.*—1. *County land-and-labor-cash crops factors.*—For each county in which tobacco is produced in 1938, a county land-cash crops factor and a county labor-cash crops factor shall be established by computing the following items with respect to a representative sample [2] of tobacco farms:

(a) The acres of cropland;

(b) The 1937 harvested and diverted acres of flue-cured tobacco;

(c) The sum of:

(1) the number of acres of tobacco other than flue-cured tobacco on such farms in 1937; (2) one-half of the number of the harvested and diverted acres of cotton on such farms in 1937; (3) one-half of the number of acres of peanuts harvested for nuts on such farms in 1937; (4) one-half of the number of acres of commercial truck and vegetables (including Irish potatoes) on such farms in 1937.

(d) The number of families on such farms in the year 1938;

(e) Item (a) shall be divided into the sum of item (b) and (c) and the quotient shall be the "county land-cash crop factor."

(f) Item (d) shall be divided into the sum of (b) and (c) and the quotient shall be the "county labor-cash crop factor."

2. *Land.*—(a) Multiply the number of acres of cropland in each farm by the county land-cash crops factor.

(b) From item (a) above, subtract the sum of: (1) the number of acres of tobacco other than flue-cured tobacco on the farm in 1937; (2) one-half of the number of the harvested and diverted acres of cotton on the farm in 1937; (3) one-half of the number of acres of peanuts harvested for nuts on the farm in 1937; (4) one-half of the number of acres of commercial truck and vegetables (including Irish potatoes) on the farm in 1937.

(c) The number of acres obtained under item (b) above, will represent the land available for the production of tobacco on the farm in relation to other farms.

3. *Labor.*—(a) Multiply the number of families on each farm by the county labor-cash crop factor.

(b) From item (a) above, subtract the sum of: (1) the number of the harvested and diverted acres of tobacco other than flue-cured tobacco on the farm; (2) one-half the number of harvested and

[2] Same as described in footnote 1.

diverted acres of cotton on the farm in 1937; (3) one-half of the number of acres of peanuts harvested for nuts on the farm in 1937; (4) one-half of the number of acres of commercial truck and vegetables (including Irish potatoes) on the farm in 1937.

(c) The number of acres obtained under item (b) above will represent the labor available for the production of tobacco on the farm in relation to other farms.

4. *Equipment.*—Compute for each farm the average acreage capacity of the flue-cured tobacco curing barns on the farm in condition for use in 1938. The average acreage capacity of such barns will be computed as follows:

Size Barn	Average Acres Capacity
16' x 16'	4
16' x 18'	5
16' x 20'	6
20' x 20'	7

5. *Land, Labor and Equipment.*—Marketings for a farm as indicated by the land, labor and equipment available for the production of tobacco on the farm will be one-third of the sum of the number of acres computed for the farm under "land," "labor," and "Equipment" (items 2, 3, and 4,) multiplied by the farm yield.

Section III. *Adjustments of Normal Marketings.*—Normal marketing for a farm computed as provided in Section II shall be adjusted as follows:

A. *Marketings in Relation to 1938 Acreage of Tobacco.*—The normal marketings for any farm shall not be greater than the number of pounds obtained by multiplying the farm yield by 150 percent of the 1938 acreage of tobacco on the farm.

B. *Marketings in Relation to Acreage Required for Minimum Crop-Rotation Practices.*—The normal marketings for any farm shall not be greater than the number of pounds obtained by multiplying a percentage of the cropland in the farm by the farm yield. The percentage of cropland shall be 40 to 50 percent, increasing above 40 percent by 1 percent for each acre by which the cropland in the farm is less than 25 acres.

C. *Marketings in Relation to Land, Labor, and Equipment and to 1938 Acreage.*—For any farm for which the "adjusted past marketings" was the number of pounds obtained by multiplying 33⅓ percent of the harvested and diverted acreage on the farm for the three years (1935–37) by the farm yield and to which B above is not applicable, the normal marketings shall not be less than 90 percent of the smaller of:

(1) The marketings indicated by land, labor, and equipment available for the production of tobacco; or

(2) 150 percent of the acreage of flue-cured tobacco to be harvested on the farm in 1938 multiplied by the farm yield.

D. *Marketings in Relation to Past Marketings.*—In no case shall the normal past marketings for any farm be more than twice as large as the "adjusted past marketings" for the farm.

E. *Marketings for New Farms in Relation to Equipment and Acreage of Tobacco.*—The normal marketings for any new farm shall not be less than the smaller of (a) 1,000 pounds for the farm plus an additional 1,000 pounds for each tobacco curing barn on the farm in condition for use in 1938, or (b) 150 percent of the acreage of tobacco to be harvested on the farm in 1938 times the farm yield.

Section IV. *Calculation of Farm Marketing Quotas from Normal Marketings.*—Farm marketing quotas will be established by adjusting normal marketing determined as provided in Sections II and III above, and apportioning the 4 percent addition to the State quota, as follows:

A. *Old Farms.*—(1) The normal marketings for all old farms (large and small) in each State will be adjusted by a uniform percentage (determined by the State office and the Agricultural Adjustment Administration) so as to equal the State marketing quota after deduction therefrom of the amount, if any, reserved pursuant to paragraph D below.

(2) There will be allocated to each such farm a "minimum quota" equal to the three-year average (1935–37) for the farm of marketings and diversion, but not more than 3,200 pounds, and not less than a number of pounds obtained by multiplying a yield 200 pounds below the farm yield by the smaller of (a) the 1938 acreage of tobacco to be harvested on the farm, or (b) 2.5 acres. The sum of such "minimum quotas" for all farms in each State will be deducted from the State quota.

(3) There will be subtracted from the normal marketings for each farm, as adjusted under item 1 above, the "minimum quota" for the farm. The resulting figure will be the "excess" for the farm.

(4) The "excess" for all farms in each State will be reduced by a uniform percentage so as to equal the amount of the State quota remaining after subtraction therefrom of the total (computed under item 3) "minimum quotas" for all farms in the State, and the amount, if any, reserved from the State marketing quota pursuant to paragraph D below.

(5) The marketing quota for each farm will be the "minimum quota" for the farm plus the "excess" (if any) for the farm as adjusted under item 4 above, and plus such additions as may be made thereto pursuant to paragraphs C and D below.

B. *New Farms.*—(1) The normal marketings for all new farms will be adjusted by a uniform percentage (determined by the Agricultural Adjustment Administration) so as to equal 3 percent of the national marketing quota of 705,000,000 pounds.

(2) There will be allocated to each new farm a "minimum quota" of that number of pounds obtained by multiplying a yield 200 pounds below the farm yield by the smaller of (a) the acreage of tobacco to be harvested on the farm in 1938, or (b) 1.3 acres. The sum of such "minimum quotas" for all farms will be deducted from the amount equal to 3 percent of the national marketing quota of 705,000,000 pounds.

(3) There will be subtracted from the normal marketings for each new farm as adjusted under item (1) above, the "minimum quota" for the farm. The resulting figure will be the "excess" for the farm.

(4) The "excess" for all new farms will be reduced by a uniform percentage so as to equal that portion of 3 percent of the national marketing quota of 705,600,000 pounds remaining after subtraction therefrom of the total (computed under item (3) above) "minimum quotas" for all new farms.

(5) The marketing quota for each new farm will be the "minimum quota" for the farm plus the "excess" (if any) for the farm as adjusted under item (4) above.

C. *Four Percent Addition to the State Quota.*—A number of pounds equal to 4 percent of the quotas established pursuant to A above for all old farms in a State will be apportioned among such farms as follows: (1)

(1) A "State percent" will be computed for each State by increasing by 10 that percent which the quotas established for all farms in the State pursuant to A above is of the normal marketing for all such farms.

(2) There will be computed for each farm in the State the amount by which the farm marketing quota established pursuant to A above is less than the number of pounds obtained by taking the "State percent" of whichever of the following amounts is the smaller:

(a) The adjusted past marketings for the farm, or

(b) 150 percent of the 1938 acreage of tobacco to be harvested on the farm in 1938 multiplied by the farm yield.

(3) The amounts computed under item (2) above for all farms in the State reduced by a uniform percentage (viz., that percentage which will reduce the total for all farms to an amount equal to 4 percent of the farm marketing quotas established for such farms pursuant to A above) will constitute the apportionments to such farms.

D. *Reserve for Adjustment by County Committees.*—An amount not in excess of 5 percent of the State marketing quota may be reserved therefrom for the purpose of making adjustments as in this paragraph provided. The amount so reserved shall be allocated by the State committee among the counties of the State upon the basis of (1) the relationship of the total "excess" (computed pursuant to paragraph A (3) above) for old farms in the county to the total "excess" for old farms in all counties in the State and (2) the relative needs of the counties for adjustments of the quotas determined for old farms thereon. The amount so allocated to a county shall be allotted by the county committee among these old farms in the county whose marketing quotas, as compared with the marketing quotas for other similar farms in the county, are determined by the county committee to require adjustment in order to take into adequate account past marketings of tobacco, making due allowance for abnormal weather conditions, plant-bed and other diseases; land, labor, and equipment

available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco.

E. *Preliminary Farm Marketing Quota.*—A preliminary quota not to exceed that number of pounds obtained by multiplying the number of acres of tobacco to be harvested on the farm in 1938 by 400 pounds may be assigned to a farm, if, within two days of the opening of the tobacco markets on which the operator of the farm states that he desires to market the tobacco produced on the farm, the farm marketing quota has not yet been allotted to the farm; provided that in the case of a new farm the preliminary quota shall not exceed the smaller of (1) the sum of 300 pounds for the farm plus 300 pounds for each tobacco curing barn on the farm in condition for use in 1938, or (2) the number of pounds obtained by multiplying the number of acres of tobacco to be harvested on the farm in 1938 by 300 pounds.

Section V. *Definitions.*—As used in these instructions and in all forms and documents in connection therewith, unless the context or subject matter otherwise requires:

1. *Act* means the Agricultural Adjustment Act of 1938 and any amendments thereto.

2. *Secretary of Agriculture* means the Secretary of Agriculture of the United States.

3. *Administrator* means the Administrator of the Agricultural Adjustment Administration of the United States Department of Agriculture.

4. *State office* means those persons or committees in the State who, under authorization by the Secretary of Agriculture, are responsible for the administration in the State of the Agricultural Adjustment Act of 1938.

5. *State Committee* means the group of persons designated within any State to assist in the administration in the State of the Agricultural Adjustment Act of 1938.

6. *Committee* means a committee within a county or community utilized under the Agricultural Adjustment Act of 1938. "County committee," "community committee," or "local committee" shall have corresponding meanings in the connection in which they are used.

7. *County Office* means those persons or committees in the county who, under authorization by the Secretary of Agriculture, are responsible for the local administration of the Agricultural Adjustment Act of 1938.

8. *Family* means a body of persons who live in one house and under one head. In the determination of the number of families on a farm, a family shall be considered as "on a farm" if the head of the family and other members of the family who ordinarily take part in farm work are regularly engaged in work on the particular farm, even though such family may not live in a house located on the farm. If a family lives in a house located on one farm and works part time

on that farm and part time on another farm, the family shall be included as a family on the farm on which the greater proportion of time is spent in work.

9. *Diversion* means the normal production on diverted acreage; diverted acreage for a farm for any year means the acres on the farm diverted from the production of tobacco during such year under the agricultural adjustment or conservation program for such year.

10. *Person* means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of a State or of the Federal Government. The term "person" shall include two or more persons having a joint or common interest. Words importing the masculine gender may be construed or applied in the feminine or neuter gender wherever the context or application of such words so requires or permits.

11. *Owner* or *Landlord* means a person who owns farm land and rents such land to another person or operates such land.

12. *Cash Tenant or Standing-Rent Tenant* or *Fixed-Rent Tenant* means a person who rents land from another for a fixed amount of cash or a commodity to be paid as rent.

13. *Share Tenant* means a person other than a share-cropper who rents land from another person and pays as rent a share of the crops or the proceeds thereof.

14. *Sharecropper* means a person who works a farm in whole or in part under the general supervision of the operator and is entitled to receive for his labor a share of a crop produced thereon or the proceeds thereof.

15. *Operator* means a person who as a landlord or cash tenant or standing or fixed-rent tenant is operating a farm and is entitled to receive all or a portion of the crops produced thereon or the proceeds of such crops, or who as a share tenant is operating a whole farm and is entitled under a written or oral lease or agreement to receive a portion of the crops produced thereon or of the proceeds of such crops.

16. *Producer* or *Farmer* means a person who is entitled to a share of the tobacco crop, or the proceeds thereof, produced on the farm in 1938, as owner, landlord, cash tenant, standing-rent tenant, fixed-rent tenant, share-tenant or sharecropper. The term "producer" or "farmer" also includes a wage hand (or cropper) who as a laborer on a farm instead of receiving daily or other cash wages for his labor receives either all the tobacco produced by him or another on an agreed or specified acreage or all the tobacco produced on an agreed or specified portion of the acreage cultivated by him or another.

17. *Farm* means all adjacent or nearby farm land under the same ownership which is operated by one person, including also:

1. Any other adjacent or nearby farm land operated by the same person (as part of the same unit with respect to the rotation of crops and with work-stock, farm machinery, and labor substantially separate from that for any other land) the inclusion of which is requested or agreed to, within the time and in the manner specified by the Agricultural Adjustment Administration, by the operator and all the owners who are entitled to share in the proceeds of the crop on any of the land to be included in the farm, which request and agreement shall be applicable to designation of the land included in such farm both under the 1938 Agricultural Conservation Program and under these instructions.

2. Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops;

Provided, That land not under the same ownership shall be included in the same farm only if the county committee determines that all of such land is customarily regarded in the community as constituting one farm. A farm shall be regarded as located in the county or the local administrative area within the county, as the case may be, in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county or local administrative area, as the case may be, in which the major portion of the farm is located.

18. *Tobacco* means flue-cured tobacco unless otherwise indicated.

19. *Flue-Cured Tobacco* means tobacco classified in Service and Regulatory Announcement Numbered 118 of the Bureau of Agricultural Economics of the Department, as types 11, 12, 13 and 14 collectively known as flue-cured tobacco.

20. *Farm Marketing Quota* means a flue-cured tobacco marketing quota established for a farm under section 313 of the Agricultural Adjustment Act of 1938.

21. *Cropland* means farm land tilled annually or in regular rotation, excluding commercial orchards.

Done at Washington, D. C., this 16th day of June 1938.[3] Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

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[3] This is the original date of issue of these instructions, but Supplements 1-5 subsequently issued are included herein.

Form 38—Tobacco 11 (Part 2). Issued June 16, 1938. United States Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. Washington, D. C.

Instructions for Determination of Flue-Cured Tobacco Farm Marketing Quotas for 1938

(Issued pursuant to the Agricultural Adjustment Act of 1938 as amended.) (Extra Copies.)

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Part 2. Collection of Data and Detailed Description of Forms and Calculations in Connection with the Determination of Flue-Cured Tobacco Farm Marketing Quotas

Section VI. Information Required for Calculation of Farm Quotas

County offices will notify the operator of each farm on which tobacco is produced in 1938 as to the information required for determination of the farm marketing quota. A copy of Form 38—Tobacco 7, "Sales Record Sheet" shall be sent to the operator with the notice.

County offices may designate places at which committeemen or clerks will be available on specified days to enter information on Form 38—Tobacco 8, "Farm Data Sheet." If the operator of a farm fails to submit the information by the date specified, committeemen or supervisors will obtain the information through visits to the farm.

The operator should be requested to prepare a list of tobacco marketings on Form 38—Tobacco 7 from warehouse bills or farm accounts, and to submit the bills or accounts together with the list for checking by committeemen, supervisors, or clerks when other information required on Form 38—Tobacco 8 is submitted. A separate list should be prepared for each farm.

Corrections will be made in the listed sales at the time warehouse bills or accounts are presented for checking. The list of sales as corrected will be attached to the Farm Data Sheet and any calculation necessary to obtain or check totals can be made at the county office.

The county code will be stamped or written, (preferably with a red or blue pencil) across each warehouse bill or each page of an account so as to indicate that the record has been presented in support of marketings.

Each of the spaces for an entry on Form 38—Tobacco 8, "Farm Data Sheet" is numbered on a copy of the form and a description of entries is given on pages 14 to 17 of these instructions.

While information is being collected on Form 38—Tobacco 8, "Farm Data Sheet," clerks in the county office shall enter on Form 38—Tobacco 9, "Farm Quota Sheet" data already available from records in the office. Data from Form 38—Tobacco 8, "Farm Data Sheet" shall be entered on Form 38—Tobacco 9, "Farm Quota Sheet" as received. Each of the spaces for an entry on Form 38—Tobacco 9 is numbered and a copy of the form and a description of the entries is given on pages 18 to 22 of these instructions.

Section VII. Extent of Calculations and Rule of Fractions

All acreages (except the county labor-cash crops factor) shall be calculated to the nearest one-tenth (.1) of an acre. The county labor-cash crops factor shall be calculated to the nearest whole acre. All percentages shall be calculated to the nearest whole percent. Fractions of more than five-tenths (.5) or five-hundredths (.05), as the case may be, shall be rounded upward and fractions of five-tenths (.5) or less or five-hundredths (.05) or less, as the case may be, shall be dropped.

All yields per acre shall be calculated to the nearest 10 pounds. Between intervals of ten, amounts of more than five pounds shall be rounded upward and amounts of five pounds or less shall be dropped.

All marketings figures resulting from multiplication of acreage by farm yields shall be calculated to the nearest 100 pounds. The three-year average of reported marketings and diversion shall be rounded to the nearest 100 pounds in all cases. Between intervals of 100, amounts of more than 50 pounds shall be rounded upward and amounts of 50 pounds or less shall be dropped.

Section VIII. Description of Entries on Farm Data Sheet

Entry number	Entry	Source of entry
1–5	Entries as described on Form	1938 county office records.
6–14	Name of head of family	1938 operator.
15–23	See footnote 1 on Form	1938 operator.
24	Total number of heads of family	Total number of families listed in Col. B, lines 1 through 9, and any supplementary listing.
25	Entry as described on Form	1938 operator.
26–29	Number of tobacco curing barns	1938 operator.
30–34	Entries as described on Form	Calculations as indicated on Form.
35	1938 measured acreage flue-cured tobacco, if available.	County office records.
36	Operator's statement of 1938 flue-cured tobacco acreage.	1938 operator. (This Statement should be obtained in all cases, and if necessary it should be adjusted to conform with estimates of committeemen or supervisors.)
37–39	Sum of entries on "Sales Record Sheet" for each year for which bills are submitted.	1938 operator.

Entry number	Entry	Source of entry
	Warehouse bills submitted in support of reported marketings "shall be accepted by committeeman only when such warehouse bills have been entered on a Sales Record Sheet" furnished to the producer for such purpose. Committeemen will check such warehouse bills against the entries on the Sales Record Sheet and stamp or enter (with a red or blue pencil) the county code on each warehouse bill entered on the Sales Record Sheet and accepted. Any entry on the Sales Record Sheet which is not acceptable will be crossed out. Totals will be made for reported marketings in each year on the Sales Record Sheet in the county office and entered in Column B, Section IV of the Farm Data Sheet. The Sales Record Sheet will be filed with the producer's other 1938 tobacco forms in the county office.	
40-42	Sum of marketings from farm	1938 operator. Enter county code, on each page as indicated for warehouse bills.
43	Sum of 1935 Tax Payment Warrants	*County office records.*
44-46	Operator's estimated pounds for each year reported.	1938 operator.
47-49	Reported past marketings of tobacco adjusted by the committee.	Committee adjustment. (See footnote 4 on Form.)
	In making adjustments, committeemen should be careful to determine accurately the reported marketings for small farms with a 3-year average of 3200 pounds or less, as such average will determine the minimum quotas which are required by the Act to be established for such farms.	
50-52	Initials of community committeeman for committee.	Community committeemen. (See footnote 4 on Form.)
53-55	Initials of county committeeman for committee.	County committeemen. (See footnote 4 on Form.)
	Community and County committeemen will initial Column G and H, respectively, only when an adjustment has been made in Column F. Initials of a member of the community committee and of county committee both are required in all cases where adjustment(s) are made. Adjustment(s) for each year should be initialed separately.	
56	Year, cause and estimated damage from abnormal conditions. For example, "1936, blue-mold reduced crop from 12 to 6 acres;" or "1937, hail destroyed 80 percent of crop."	1938 operator.
57-60	Entries as described on Form	As described on Form.

Form 38—Tobacco 8

1 (Code and Serial Number)

2 (Name of Farm)

FARM DATA SHEET

1938 FLUE-CURED TOBACCO MARKETING QUOTA

3 (Community) 4 (1938 Operator) 5 (Address)

Section I. Labor Working Regularly on Farm in 1938

Name of head of family	Indicate tenure [1]
A	B
6	15
1. 7	16
2. 8	17
3. 9	18
4. 10	19
5. 11	20
6. 12	21
7. 13	22
8. 14	23
9.	24
10. (a) Total number of heads of families	

Section II. Tobacco Curing Barns on Farm in Condition for Use in 1938

Size barn	Number barns	Average acres capacity	Number barns X average acre capacity
A	B	C	D
11. 16' x 16'	26	4	30
12. 16' x 18'	27	5	31
13. 16' x 20'	28	6	32
14. 20' x 20'	29	7	33
15. Total acres capacity			34

Section III. Acreage of Flue-Cured Tobacco to be harvested on this farm in 1938

16. (a) Measured 35

(b) Operator's Statement 36

10. (b) Number tenant houses occupied in 1938 37

Section IV. Reported Marketings of Tobacco and Supporting Records

Year	Warehouse bills (pounds) [2]	Farm [2] account (pounds)	Warrants (pounds) [3]	Estimate (pounds)	Committee adjusted (pounds) [4]	Initialed for committee by [4]	
						Community	County
A	B	C	D	E	F	G	H
17. 1935	37	40	43	44	47	50	53
18. 1936	38	41	xxxx	45	48	51	54
19. 1937	39	42	xxxx	46	49	52	55

20. Indicate years affected by abnormal conditions, and cause and amount of estimated damage for each year 56

[1] Indicate whether Operator (O), Share tenant (T), Share-cropper (C), or Wage hands (W). Include operator's family only if working on farm, but do not count operator's family for more than one farm. An overseer's or superintendent's family can be included as "wage hands," but not on more than one farm.

[2] Enter the pounds of tobacco sold from the farm in each of the years 1936 and 1937 in Columns B, C, or E, whichever is applicable.

[3] County office will enter total of sales obtained from tax payment warrants.

[4] The reported marketings for any year shall be adjusted by the committee if it determines that the amount of such marketings as shown by the records submitted by the operator, or as estimated by him, is larger than the amount of tobacco which reasonably

I hereby certify that the data entered herein (other than the adjusted marketing figures (if any) in Column F of Section IV) are in accordance with information furnished by me and that such data to the best of my knowledge and belief are correct.

_____57_____ (Date)

_____58_____ (Signature of operator or his representative)

I hereby certify that the data entered herein are in accordance with information furnished to me by the operator or his representative.

_____59_____ (Date)

_____60_____ (Committeeman or County Office Clerk)

Section IX. Description of Entries on Farm Quota Sheet

Entry number	Entry	Source of entry
1-4	Entries as described on form	1938 county office records.
5-7	1935, 1936 and 1937 base acres	County office records.
8-10	1935, 1936 and 1937 harvested acres	County office records.
	If the county office records do not show the harvested acreage for any year due to the fact that such acreage was not measured in connection with the agricultural adjustment or conservation program in such year, the acreage reported by the operator as having been harvested in such year shall be adjusted (except in those cases where the adjustments have already been made) if the committee determines that such reported acreage is larger than the number of acres which reasonably could be harvested in such year. The committee's determination should take into consideration the acres of curing barn space available, the cropland, the acres of other crops grown on the farm and the labor on the farm for such year. The adjusted harvested acreage for any one year shall be an acreage which the committee finds on the basis of the factors indicated in the sentence above could reasonably be expected to have been produced on the farm in such year. Any necessary adjustment of reported harvested acres should be made on the form from which obtained prior to entry on the Farm Quota Sheet.	
11	1935 rented acres	Base minus harvested acres, but not over 15 percent of 1935 tobacco base.
12	1936 diverted acres	Base minus harvested acres, but not over 30% of 1936 tobacco base.
13	1937 diverted acres	Base minus harvested acres, but not over 25% of 1937 tobacco base.
14-16	Harvested acres adjusted for abnormal conditions.	(Footnote 1 on Form).
17-19	Adjusted harvested and diverted acres	Col. D plus Col. E on Farm Quota Sheet.
20-22	Pounds of tobacco sold from the farm in each of the years 1935-37 as adjusted by the committee on Farm Data Sheet.	Section III, Column F on Farm Data Sheet.
23	Initials of one county committeeman for county committee; or of clerk designated by county committee.	(See footnote 2 on Form).
24	Total diverted acreage for years 1935-37	Sum of Col. D, lines 1, 2, and 3.
25	Farm yield (nearest 10 pounds)	See footnote 3 on Form and Instructions, Sec. II, page 4.
26	Total normal production on diverted acreage for years 1935-37.	Calculation as indicated on Form.
27	Total reported marketings for years 1935-37	Sum of Col. G, lines 1, 2, and 3.
28	Total reported marketings plus total diversion for years 1935-37.	Entry 26 plus entry 27.
29	Three-year average marketings and diversion	One-third of entry 28.
30	Total adjusted harvested and diverted acreage for years 1935-37.	Sum of Col. F, lines 1, 2, and 3.
31	Total adjusted harvested and diverted acreage for two highest years 1935-37.	Sum of two highest entries in Col. F, lines 1, 2, and 3.

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could be expected to have been marketed from the farm in such year. The determination of the committee should take into consideration the acreage planted to tobacco on the farm in such year, the yield on the farm in years for which records acceptable to the committee are available, the yields obtained in such year on other farms in the same community which are similar with respect to soil, topography, and production facilities, and the community average yield for such year. The adjusted marketings for any one year shall be the amount of tobacco which the community committee working under supervision of the county committee finds on the basis of the factors indicated in the sentence above could reasonably be expected to have been marketed from the farm in such year. All adjusted marketings shall be initialed by a community committeeman on behalf of the community committee and by a county committeeman on behalf of the county committee.

Entry number	Entry	Source of entry
32	Adjusted harvested and diverted acreage for highest year 1935-37.	Largest entry in Col. F, lines 1, 2, and 3.
33-35	Entries as described on Form	Calculation as indicated on Form.
36	Farm yield	Same as entry 25.
37	Pounds (nearest 100 pounds)	Largest acreage in Col. C, Sec. II, times his yield.
38	Adjusted past marketings	As described on form.
39	Cropland in farm	County office records.
40	County land-cash crops factor (nearest whole percent).	Obtained by dividing the sum of items 7 (f) plus the 1937 harvested and diverted acreage of flue-cured tobacco, for a representative sample of farms (not less than 20% of the tobacco farms in the county, including tobacco farms from each community) by the sum of the cropland 1 for the same farms.
41	Entry as described on Form	Calculation as indicated on Form.
42-44	Entries as described on Form	County office records.
45-47	Entries as described on Form	Calculations as indicated on Form.
48	Entry as described on Form	County office records.
49	Adjusted acres cash crops for the farm other than flue-cured tobacco	Sum of entries 45 through 48.
50	Land available for tobacco	Entry 41 minus entry 49. If negative, enter zero.
51	Number of families on farm	Farm Data Sheet, line 10 (a).
52	County labor-cash crops factor (nearest whole acre).	Divide the sum of items 7 (f) plus the 1937 harvested and diverted acreage of flue-cured tobacco, as obtained for entry 40, by the total number of families on the same farms.
53-55	Entries as described on Form	As indicated on Form.
56	Entry as described on Form	Farm Data Sheet, line 15.
57	Entry as described on Form	Sum of entries 50, 55, and 56.
58	One-third of acres indicated by land, labor and equipment.	One-third of entry 57.
59	Farm yield	Same as entry 25.
60	Marketings indicated by land, labor and equipment (nearest 100 pounds).	Calculation as indicated on Form.
61	Three times adjusted past marketings.	Three times entry 38.
62	Marketings indicated by land, labor and equipment.	Same as entry 60.
63	Entry as described on form	Calculation as indicated on Form.
64	Marketings indicated by adjusted past marketings and land, labor, and equipment	Calculation as indicated on Form.
65	One and one-half times 1938 acreage of flue-cured tobacco.	Farm Data Sheet, line 16 (a), if available, otherwise line 16 (b).
66	Farm yield	Same as entry 25.
67	Maximum marketings indicated by 1938 acreage of flue-cured tobacco (nearest 100 pounds).	Calculation as indicated on Form.
68	Percentage factor	(See footnote 4 on Form).
69	Cropland in farm	Same as entry 39.
70	Entry as described on Form	Calculation as indicated on Form.
71	Farm yield	Same as entry 25.
72	Marketings adjusted for minimum crop rotation practices (nearest 100 pounds).	Calculation as indicated on Form.
73	Minimum marketings in relation to land, labor and equipment and to 1938 acreage of flue-cured tobacco. (Applicable only if line 5 (a) was used in arriving at the adjusted past marketings and item 14 is larger than item 12) (nearest 100 pounds).	If applicable, 90 percent of smaller of entries 60 or 67. If not applicable, zero.
74	Normal marketings	Smallest of entries 64, 67, or 72 but, if applicable, not less than entry 73. In no case will entry 74 be more than twice as large as entry 38.

Form 38—Tobacco 9. United States Department of Agriculture. Agricultural Adjustment Administration. June 1938.

1
(Code and Serial Number)

Farm Quota Sheet 1938 Flue-Cured Tobacco Marketing Quota

2 (Township or District) 3 (1938 Operator) 4 (Address)

Section I. Past Marketings (Adjusted for Abnormal Conditions), and the Soil and Other Physical Factors

Year	Base Acreage	Harvested Acreage	Diverted Acreage	Adjusted Harvested Acreage [1]	Adj. Har. and Div. Acreage	Marketings (Pounds)	Initialed for Committee by: [2]
A	B	C	D	E	F	G	H
1. 1935	5	8	11	14	17	20	
2. 1936	6	9	12	15	18	21	23
3. 1937	7	10	13	16	19	22	

4. 24 (Total Div. Acres 3-yrs.) × 25 (Farm Yield) [3] = 26 (Total Diversion) + 27 (Total Reported Marketings 3-yrs.) = 28 (Pounds) ×33⅓%= 29 (Pounds)

Adjusted Harvested and Diverted Acres 1935-1937	Percent [3]	Acres	Farm [3] Yield (Pounds)	
A	B	C	D	E
5. (a) 30 (Total 3 years)	× 33⅓ =	33		
(b) 31 (Total 2 highest years)	× 40 =	34	× 36 Multiply yield by largest acreage in Col. C.	= 37 (Pounds)
(c) 32 (Highest year)	× 60 =	35		

[1] Where the committee finds that in any of the three years 1935-37 an acreage less than 60 percent of the base acreage for such year under the agricultural adjustment or conservation program was harvested because of flood, drought, hail or blue-mold, the harvested acreage for such year shall be adjusted to 70 percent of the base acreage.

[2] One county committeeman (or a clerk designated by the committee) will initial for county committee if all reported marketings have been substantiated by records acceptable to the committee. The county committee will not initial in any case where an adjustment has been made in the reported marketings for any year by the community or county committee as shown in Column F of Section IV of the Farm Data Sheet.

[3] If available, use 1935 farm yield adjusted to not more than 300 pound above or below the 1935 county yield, otherwise use the 1935 community yield (See Sec. II, A 3 of Form 38—Tobacco II for instructions regarding adjustments for abnormal conditions).

6. Adjusted Past Marketings. (Use line 5 in all cases unless all reported marketings are substantiated by records acceptable to the county committee, in which case the larger of line 4 or line 5 will be used.)..... 38 (Pounds)

Section II. Land, Labor and Equipment Available for Tobacco.

7. Land:

(a) Cropland 39 (Acres) × 40 (County land-cash crops factor) % = 41 (Acres)

(b) 1937 harvested and diverted acreage cotton..... 42 (Acres) ×½ 45 (Acres)

(c) 1937 acreage peanuts harvested for nuts..... 43 (Acres) ×½ 46 (Acres)

(d) 1937 acreage commercial truck and vegetables (including Irish potatoes)..... 44 (Acres) ×½ 47 (Acres)

(e) 1937 harvested and diverted acreage of tobacco other than flue-cured..... 48 (Acres)

(f) Adjusted cash crops other than flue-cured tobacco (sum of (b) through (e))..... 49 (Acres)

(g) Land available for tobacco relative to other farms (item 7 (a)—item 7 (f))..... 50 (Acres)

8. Labor:

(a) 51 (Number families) × 52 (County labor-cash crops factor) = 53 (Acres)

(b) Adjusted cash crops for farm other than flue-cured tobacco (Item 7 (f))..... 54 (Acres)

(c) Acres representing labor available for tobacco relative to other farms (Item 8 (a)—8 (b))..... 55 (Acres)

9. Equipment:

Curing barns on farm in condition for use in 1938 (allowing average capacity)..... 56 (Acres)

10. Total of acres representing land, labor and equipment available for tobacco (7 (g) plus 8 (c) plus 9)..... 57 (Acres)

11. Marketings Indicated by Land, Labor, and Equipment:

58 (¼ of item 10) (acres) × 59 (Farm yield) [3] = 60 (Pounds)

[3] If available, use 1935 farm yield adjusted to not more than 300 pounds above or below the 1935 county yield; otherwise use the 1935 community yield (See Sec. II, A 3 of Form 38—Tobacco II for instructions regarding adjustments for abnormal conditions).

Section III. Determination of Normal Marketings of Tobacco.

12. Marketings indicated by adjusted past marketings and land, labor, and equipment:

$$\underset{\text{(Item 6×5)}}{61} + \underset{\text{(Item 11)}}{62} = \underset{\text{(Pounds)}}{63} \div 4 = \underset{\text{(Pounds)}}{64}$$

13. Maximum marketings indicated by 1938 acreage of tobacco:

$$\underset{\text{(1½ × 1938 acreage of flue-cured tobacco)}}{65} \times \underset{\text{(Farm Yield)}}{66\ [3]} = \underset{\text{(Pounds)}}{67}$$

14. Marketings adjusted for minimum crop rotation practices:

$$\underset{\text{(Percent)}}{68\ [4]} \times \underset{\text{(Cropland)}}{69} = \underset{\text{(Acres)}}{70} \times \underset{\text{(Farm Yield)}}{71\ [3]} = \underset{\text{(Pounds)}}{72}$$

15. Minimum marketings in relation to land, labor, and equipment and to 1938 acreage of tobacco [5]_____ 73 (Pounds)

16. Normal Marketings (Smaller of items 12, 13, or 14 but, if applicable, not less than item 15)[6]_____ 74 (Pounds)

Done at Washington, D. C., this 16th day of June 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

Exhibit 7 (a)

(Omitted by agreement as having been substantially covered by other exhibits.)

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[3] If available, use 1935 farm yield adjusted to not more than 300 pounds above or below the 1935 county yield; otherwise use the 1935 community yield (See Sec. II, A 3 of Form 38—Tobacco II for instructions regarding adjustments for abnormal conditions).

[4] Maximum of 40 to 50%, increasing 1% from 40% to 50% for each acre by which cropland is less than 25 acres.

[5] Item 15 will be applicable only if line 5 (a) was used in arriving at the adjusted past marketings and item 14 is larger than item 12. If applicable, item 15 will be 90 percent of the smaller of item 11 or item 13. If not applicable, item 15 will be zero.

[6] In no case shall the normal marketings for any farm be more than twice as large as item 6.

Exhibit 7 (b)

Form 38—Tobacco 8. U. S. Department of Agriculture. Agricultural Adjustment Administration. Tobacco section. June 1938.

(Code and serial number)

(Name of farm)

Farm Data Sheet

1938 FLUE-CURED TOBACCO MARKETING QUOTA

(Community) (1938 Operator) (Address)

Section I.—Labor Working Regularly on Farm in 1938

	Name of head of family (A)	Indicate tenure[1] (B)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10	(a) Total number of heads of families	

Section II.—Tobacco Curing Barns on Farm in Condition for Use in 1938

	Size barn (A)	Number of barns (B)	Average acres capacity (C)	Number of barns X average acres capacity (D)
11	16' x 16'		4	
12	16' x 18'		5	
13	16' x 20'		6	
14	20' x 20'		7	
15	Total acres capacity			

Section III.—Acreage of Flue-Cured Tobacco to be Harvested on This Farm in 1938

16	(a) Measured	
	(b) Operator's statement	
10	(b) Number tenant houses occupied in 1938	

Section IV.—Reported Marketings of Tobacco and Supporting Records:

	Year (A)	Warehouse bills[2] (pounds) (B)	Farm account[2] (pounds) (C)	Warrants[3] (pounds) (D)	Estimate[2] (pounds) (E)	Committee adjusted (pounds)[4] (F)	Initialed for committee by[4]: Community (G)	Initialed for committee by[4]: County (H)
17	1935							
18	1936			XXXXX				
19	1937			XXXXX				

20. Indicate years affected by abnormal conditions, and cause and amount of damage

I hereby certify that the data entered herein (other than the adjusted marketing figures [if any] in col. F of sec. IV) are in accord-

[1] Indicate whether operator (O), share tenant (T), sharecropper (C), or wage hands (W). Include operator's family only if working on farm, but do not count operator's family for more than one farm. An overseer's or superintendent's family can be included as "wage hands," but not on more than one farm.

[2] Enter the pounds of tobacco sold from the farm in each of the years 1936-37 in column B, C, or E, whichever is applicable.

[3] County office will enter total of sales obtained from tax payment warrants.

[4] The reported marketings for any year shall be adjusted by the committee if it determines that the amount of such marketings as shown by the records submitted by the operator, or as estimated by him, is large

nce with information furnished by me and that such data to the best of my knowledge and belief are correct.

(Date) (Signature of operator or his representative)

I hereby certify that the data entered herein are in accordance with information furnished to me by the operator or his representative.

(Date) (Committeeman or county office clerk)

Exhibit 7 (c)

Form 38—Tobacco 9. U. S. Department of Agriculture. Agricultural Adjustment Administration Tobacco Section. June 1938.

(Code and serial number)

Farm Quota Sheet

1938 FLUE-CURED TOBACCO MARKETING QUOTA

(Community) (1938 Operator) (Address)

Section I.—Past Marketings (Adjusted for Abnormal Conditions), and the Soil and Other Physical Factors

Year	Base acreage	Harvested acreage	Diverted acreage	Adjusted harvested acreage [1]	Adjusted harvested and diverted acreage	Marketings (Pounds)	Initialed for committee by: [2]—
A	B	C	D	E	F	G	H
1935							
1936							
1937							

_____ × _____ [3] = _____ + _____ = _____ × 33⅓% = _____

(Total diverted acres 3 years) (Farm yield) (Total pounds diversion) (Total marketings 3 years) (Total pounds) (Pounds)

[1] the amount of tobacco which reasonably could be expected to have been marketed from the farm in ch year. The determination of the committee should take into consideration the acreage planted to acco on the farm in such year, the yield on the farm in years for which records acceptable to the com- tee are available, the yields obtained in such year on other farms in the same community which are ilar with respect to soil, topography, and production facilities, and the community average yield for h year. The adjusted marketings for any one year shall be the amount of tobacco which the community mittee, working under the supervision of the county committee, finds on the basis of the factors indi- ed in the sentence above could reasonably be expected to have been marketed from the farm in such r. All adjusted marketings shall be initialed by a community committeeman on behalf of the com- nity committee and by a county committeeman on behalf of the county committee.

Where the committee finds that in any of the three years 1935-37 an acreage less than 60 percent of the e acreage for such year under the agricultural adjustment or conservation program was harvested because flood, drought, hail, or blue-mold, the harvested acreage for such year shall be adjusted to 70 percent of base acreage.

One county committeeman (or a clerk designated by the committee) will initial for county committee. ll reported marketings have been substantiated by records acceptable to the committee. The county mittee will not initial in any case where an adjustment has been made in the reported marketings for year by the community or county committee as shown in Column F of Section IV of the Farm Data et.

[3] Use 1935 farm yield if such yield is known; otherwise use 1935 community yield. See Sec. II, A, 3 of rm 36—Tobacco 11 for instructions regarding adjustments for abnormal condition.

5. *Adjusted harvested and diverted acres 1935–37* — *Percent* — *Acres* — *Farm[1] yield (pounds)*

(A) (B) (C) (D)

(a) _____ (Total 3 years) × 33⅓ = _____ ×

(b) _____ (Total 2 highest years) × 40 = _____ × = _____

(c) _____ (Highest year) × 60 = _____ ×

(Multiply yield by (Pounds) largest acreage in column (C) line 5(a), 5(b), or 5(c))

6. *Adjusted Past Marketings.*—(Use line 5 in all cases unless all reported marketings are substantiated by records acceptable to the county committee, in which case the larger of line 4 or line 5 will be used.) _____ (Pounds)

Section II.—Land, Labor, and Equipment Available for Tobacco

7. Land:

(a) Cropland _____ (Acres) × _____ (County land-cash crops factor) % _____ (Acres)

(b) 1937 harvested and diverted acreage cotton _____ (Acres) × ½ = _____ (Acres)

(c) 1937 acreage peanuts harvested for nuts _____ (Acres) × ½ = _____ (Acres)

(d) 1937 acreage commercial truck and vegetables (including Irish potatoes) _____ (Acres) × ½ = _____ (Acres)

(e) 1937 harvested and diverted acreage of tobacco other than flue-cured _____ (Acres)

(f) Adjusted cash crops other than flue-cured tobacco (sum of items (b) through (e)) _____ (Acres)

(g) Land available for tobacco relative to other farms (item 7 (a)—7 (f)) _____ (Acres)

8. Labor:

(a) _____ (Number families) × _____ (County labor-cash crops factor) (acres) = _____ (Acres)

(b) Adjusted cash crops for farm other than flue-cured tobacco (item 7 (f)) _____ (Acres)

(c) Acres representing labor available for tobacco relative to other farms (item 8 (a)—8 (b)) _____ (Acres)

9. Equipment:

Curing barns on farm in condition for use in 1938 (allowing average capacity) _____ (Acres)

10. Total acres indicating land, labor, and equipment available for tobacco (7 (g) plus 8 (c) plus 9) _____ (Acres)

11. *Marketings Indicated by Land, Labor, and Equipment:*

_____ (¼ of item 10) acres × _____[1] (Farm yield) = _____ (Pounds)

Section III.—Determination of Normal Marketings of Tobacco

12. Marketings indicated by adjusted past marketings and land, labor, and equipment:

_____ (Item 6X3) + _____ (Item 11) = _____ (Pounds) ÷ 4 = _____ (Pounds)

13. Maximum marketings indicated by 1938 acreage of tobacco:

_____ (1¼ × 1938 acreage of flue-cured tobacco) × _____[1] (Farm yield) = _____ (Pounds)

[1] Use 1935 farm yield if such yield is known; otherwise use 1935 community yield. See Sec. II, A, 3 of Form 38—Tobacco 11 for instructions regarding adjustments for abnormal condition.

14. Marketings adjusted for minimum crop rotation practices:
_____ [1] × _____ = _____ × _____ [2] = _____ _____
(Percent) (Cropland) (Acres) (Farm yield) (Pounds)

15. Minimum marketings in relation to land, labor, and equipment and to 1938 acreage of tobacco [3] _____ (Pounds)

16. *Normal Marketings* (Smallest of items 12, 13, or 14 but, if applicable, not less than item 15) [4] _____ (Pounds)

Exhibit 8

38-A. A. A.-2. Issued July 13, 1938. United States Department of Agriculture. Agricultural Adjustment Administration. Washington, D. C.

(Review Regulations)

REGULATIONS GOVERNING (A) APPLICATIONS AND HEARINGS UNDER SECTION 363 OF TITLE III OF THE AGRICULTURAL ADJUSTMENT ACT OF 1938 RELATING TO ADMINISTRATIVE REVIEW OF MARKETING QUOTAS FOR TOBACCO, CORN, WHEAT, COTTON, AND RICE ESTABLISHED UNDER SAID TITLE AND (B) THE PUBLICATION AND NOTICE OF SUCH QUOTAS UNDER SECTION 362 OF SAID ACT (PUBLIC, NO. 430—75TH CONGRESS—52 STAT. 31, AS AMENDED)

UNITED STATES DEPARTMENT OF AGRICULTURE,
Office of the Secretary.

By virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act of 1938, I, HENRY A. WALLACE, Secretary of Agriculture, do hereby make, prescribe, publish, and give public notice of the following regulations, to be in force and effect from the date hereof until amended or superseded by regulations hereafter made by the Secretary of Agriculture under the authority of said act.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, this 13th day of July, 1938.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

---

[1] Use 1935 farm yield if such yield is known; otherwise use 1935 community yield. See Sec. II, A, 3 of Form 38—Tobacco 11 for instructions regarding adjustments for abnormal conditions.

[2] Maximum of 40 to 50 percent, increasing 1 percent from 40 percent to 50 percent for each acre by which cropland is less than 25 acres.

[3] Item 15 will be applicable only if line 5 (a) was used in arriving at the adjusted past marketings and item 14 is larger than item 12. If applicable, item 15 will be 90 percent of the smaller of item 11 or item 13. If not applicable, item 15 will be zero.

[4] The normal marketings for any farm shall in no case be more than twice as large as item 6.

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ARTICLE I. DEFINITIONS

SECTION 100. As used in these regulations:

(a) The term "act" means the Agricultural Adjustment Act of 1938 and any amendments thereto.

(b) The term "Secretary of Agriculture" means the Secretary of Agriculture of the United States.

(c) The term "Department" means the United States Department of Agriculture.

(d) The term "Hearing Clerk" means the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.

(e) The term "review committee" means the review committee whose appointment by the Secretary of Agriculture is provided for by section 363 of title III of the act.

(f) The term "committee", except when referring to review committee, means a committee utilized under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act.

(g) The term "quota" means a marketing quota established for a farm, in the case of tobacco, corn, wheat, and cotton, and for a producer, in the case of rice, under title III of the act.

(h) The term "acreage allotment" means an acreage allotment established for a farm, in the case of corn, wheat, and cotton, and for a producer, in the case of rice, under title III of the act.

(i) The term "application" means an application for review of a marketing quota, the filing of which is provided for by section 363 of title III of the act.

ARTICLE II. PUBLICATION OF ACREAGE ALLOTMENTS AND MARKETING QUOTAS AND NOTICE OF QUOTAS

SECTION 200. *Publication.*—(a) Immediately upon the establishment of acreage allotments and of quotas for any commodity, the county committee shall prepare a list containing the information specified in sections 201 and 202 of this article.

(b) A copy of the list so prepared shall be permanently kept freely available for public inspection in the office of the county committee, and a copy of the list shall be posted for not less than thirty days in a conspicuous place in the county (or in the case of cotton in each local administrative area in the county if the county is divided into two or more local administrative areas for the purpose of the cotton marketing quota provisions of the act). Another copy of the list shall be furnished to the County Agricultural Extension Agent who shall keep the list permanently available for public inspection in his office.

SECTION 201. *List of Acreage Allotments.*—The list shall contain the following information relating to acreage allotments:

(a) the allotment for each farm or, in the case of rice, for each producer;

(b) the identification of the farm by giving the name of the owner or operator and the legal description of the farm, the location of the farm, or the name by which the farm is commonly known; in the case of rice, the name of the producer shall be given;

(c) the serial number for each farm or, in the case of rice, for each producer;

(d) the calendar year for which such acreage allotment is made.

SECTION 202. *List of Marketing Quotas.*—The list shall contain the following information relating to marketing quotas:

(a) the acreage allotment, if any, for each farm, or in the case of rice, for each producer;

(b) the marketing percentage of the acreage allotment in the case of corn and wheat;

(c) the normal yield per acre for each farm in the case of corn, wheat, and cotton;

(d) the storage amount for each farm in the case of corn;

(e) the marketing quota for each farm or, in the case of rice, for each producer, expressed insofar as practicable in applicable units, such as pounds, bales, barrels, or bushels;

(f) the identification of the farm by giving the name of the owner or operator and the legal description of the farm, the location of the farm, or the name by which the farm is commonly known; in the case of rice, the name of the producer shall be given;

(g) the serial number for each farm, or, in the case of rice, for each producer;

(h) the marketing year or, in the case of corn, the crop, for which such marketing quota is effective.

SECTION 203. *Notice of Quotas.*—(a) Immediately upon the establishment of quotas for any commodity, the county committee shall mail a written notice of the quota to the producer, in the case of rice, and to the operator of the farm, in the case of tobacco, corn, wheat, or cotton. A notice to the operator of the farm shall contain at or near the top thereof the following statement: "To all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which this quota is established," and such notice shall constitute notice to all such persons. The notice shall contain the information required by section 202 of this article to be contained in the list of marketing quotas for publication. The notice shall contain also, on the face or back thereof, a brief reference to, or statement of, the procedure whereby application for review of the quota may be made.

(b) A copy of each notice, containing a notation thereon, of the date of mailing, shall be kept among the records of the county committee, and, upon request, a copy of such notice, certified by the secretary of the county committee as true and correct, shall be furnished without charge to any person interested in the farm in respect to which the quota is established.

SECTION 204. *Other Regulations.*—The provisions of this article may be supplemented by regulations issued by the Secretary of Agriculture in respect to acreage allotments or marketing quotas for any specific commodity.

ARTICLE III. APPLICATIONS FOR REVIEW OF QUOTAS

SECTION 300. *Manner and Time of Filing Application.*—An application shall be in writing and addressed to, and filed with, the secretary of the county committee through which the quota sought to be reviewed was established. The application shall be filed within fifteen days after the date of mailing of the notice of such quota.

SECTION 301. *Contents of Application.*—The application shall be accompanied by the original mailed notice of the quota sought to be reviewed, or by a copy of such notice certified as true and correct by the secretary of the county committee, and shall contain:

(a) the date of the application;

(b) the correct full name and full address of the applicant;

(c) a statement of the amount of quota which it is claimed should have been made;

(d) a brief statement of each ground upon which the application is based;

(e) the signature of the applicant.

SECTION 302. *Record of Applications.*—The secretary of the county committee shall make a notation on each application of the date of the receipt thereof by him and give such application an identification number.

SECTION 303. *Insufficient and Untimely Applications.*—If the secretary of the county committee finds that any application filed (a) is not in substantial compliance with the provisions of section 301 of this article, or (b) is not made within the period fixed for the filing of applications, he shall so notify the applicant in writing by depositing the writing, accompanied by a copy of these regulations in the United States mails, registered and addressed to the applicant at his last known address. In the case of an insufficient application filed within the period fixed for the filing of applications, the applicant may, within fifteen days after the date of mailing of the notification aforesaid, file with such secretary an amended application containing the matter specified in section 301 of this article.

SECTION 304. *Clerk to Review Committee.*—The Secretary of the county committee shall act as clerk to the review committee, unless and until some other person shall have been designated by the county committee as clerk to the review committee. The county committee may designate a person other than the secretary of the county committee to act as clerk to the review committee. If not already an employee, the person so designated shall thereby become an employee of such county committee. Immediately upon such designation, the county committee shall notify the State committee thereof. In the event of such designation, the secretary of the county committee shall transmit to the person so designated any and all applications received by him and all papers and information relating thereto.

SECTION 305. *Transmission of Information.*—The clerk to the review committee shall furnish to the State committee such information pertaining to applications filed with him as the State Committee may require.

ARTICLE IV. THE REVIEW COMMITTEE

SECTION 400. *Eligibility.*—Any farmer who now is, who may hereafter become, or who is eligible to become a member of any county or community committee shall be eligible to serve on review committees to hear applications for review of quotas established in counties or communities which are adjacent to or nearby the county or community, as the case may be, for which he is a committeeman or eligible to become a committeeman. The eligibility hereby declared shall be subject at all times to the provisions of the following sections of this article. No farmer who is a member of a county or community committee of, or whose legal residence is in, one State shall be eligible to serve on a review committee in any other State.

SECTION 401. *Establishment.*—Three eligible farmers shall be designated to serve on a review committee for a county, a group of counties, a community, or group of communities, and of the farmers so designated one shall be named chairman, and another vice-chairman, of such committee. The vice-chairman shall perform the duties and exercise the powers, of the chairman in the absence of the chairman. No review committee shall include any member of the county or community committee through which was determined any matter relating to any quota for the review of which the review committee is established. Subject to the provisions of this section and of section 400 of this article, the same farmer may be designated to serve on more than one review committee. An eligible farmer may be designated as alternate member of the committee to serve in the event of the absence of any regular member thereof, or in case of a vacancy in the committee.

SECTION 402. *Vacancies.*—Subject to the requirements of eligibility set forth in sections 400 and 401 of this article, a farmer shall be designated to fill any vacancy occurring in any review committee. Where a single vacancy occurs after a hearing is begun and before the final determination, the remaining two members of the committee shall thenceforth constitute an entire committee for the purposes of such hearing. If more than one such vacancy occurs, or if the two remaining members of the committee cannot agree upon a determination, there shall be a new hearing, after the filling of the vacancy, by the entire committee of three members.

SECTION 403. *Manner of Designation.*—The designations mentioned in sections 401 and 402 of this article with respect to a review committee and the area for which the committee shall serve, shall

made in writing by the Secretary of Agriculture and notice of such designation shall be sent to (a) the farmer so designated, (b) the clerk to the review committee, and (c) the State committee.

SECTION 404. *Time of Designation.*—Any designation may be made before, during, or after the period during which applications are required to be filed.

SECTION 405. *Period of Designation.*—A review committee shall hear applications for review of any quota established in the area for which, and becoming effective during the calendar year in which, the committee is established.

SECTION 406. *Reservation of Powers of Secretary of Agriculture.*—Notwithstanding any of the foregoing provisions of this article, the Secretary of Agriculture shall have the continuing power to revoke or suspend any designation made pursuant to the provisions of this article, and, subject to the provisions of the act, to make such other designation as he may deem proper.

SECTION 407. *Effect of Changes in Review Committee.*—Nothing contained in the foregoing provisions of this article relating to any vacancy or revocation or suspension of designation, and nothing done pursuant to such provisions, shall be construed as affecting the validity of any prior hearing conducted or determination made in accordance with these regulations, in which the member of the review committee, whose place has become vacant, participated, or as affecting in any way any court proceeding which may be instituted, pursuant to the provisions of the act, for the review of such determination.

SECTION 408. *Compensation.*—The members of a review committee designated in accordance with the provisions of this article shall receive the same compensation as that received by the members of the county committee through which were established the quotas sought to be reviewed. The payment of such compensation shall be governed by instructions issued by the Agricultural Adjustment Administration. The members of a review committee shall not be entitled to receive compensation for services as members of such committee for more than thirty days in any one year. Reimbursement for travel expenses shall be made at such rates and under such conditions as may be prescribed by the Agricultural Adjustment Administration.

ARTICLE V. HEARINGS

SECTION 500. *Place of Hearing.*—The place of hearing shall be in the office of the county committee through which the quota sought to be reviewed was established, or such other appropriate place in the county as may be designated by the review committee.

SECTION 501. *Notice of Hearing.*—As soon as practicable after its establishment, the review committee shall arrange with the clerk to

the committee for the appointment of the time and the de
of the place for hearing on applications. Notice of the hear
be given by such clerk. The notice shall be in writing a
specify the time, place and purpose of the hearing. Suc
shall be given to the applicant by depositing the same, at l
days prior to the time appointed for the hearing, in the Unite
mails, registered and addressed to the applicant at his last
address. The State committee shall also be notified in wri
such hearing. A copy of all such notices shall be kept and r
by such clerk.

SECTION 502. *Time and Place of Hearing.*—Such hearing s
held at the time and place set forth in the notice of hearing
any subsequent notice amending or superseding the prior noti
also may, without notice other than an announcement at the h
by the chairman of the review committee, in the exercise
discretion of the committee, be continued from day to day,
journed to a different place in the county or to a later date,
date and place to be fixed in a subsequent notice to be issued
manner provided in sections 500 and 501 of this article.
temporary absence of any member of the committee, the mem
members present shall postpone the hearing to a later date and
In the absence of the entire committee, the postponement sh
made by the clerk.

SECTION 503. *Conduct and Scope of Hearing.*—Except as pr
in section 402 of article IV of these regulations, every such h
shall take place before the entire review committee and shall b
sided over by the chairman thereof. The hearing shall be pu
conducted. The committee shall provide for the taking of such
at the hearing as will enable it to make a written summary of th
vant evidence received at the hearing. A stenographic transcr
the testimony received shall be made if (a) the applicant re
such transcript and provides for the making thereof and fo
payment of the expense therefor, or (b) the State committee re
that such transcript be made. Immediately upon the completi
any such transcript made at the request of the applicant, three l
copies thereof shall be furnished to the review committee wi
charge. The committee shall consider only such matters as,
the applicable provisions of the act and regulations of the Secr
of Agriculture thereunder, are required to be considered by the c
committee in the establishment of the quota sought to be revi
The review committee shall not give consideration to any evi
which is irrelevant to the determination of the quota for the appl
The hearing shall be conducted in a manner determined by the
mittee to be conducive to the proper dispatch of business an
attainment of justice.

SECTION 504. *Representation.*—The applicant and the Secretary of Agriculture may be represented at the hearing.

SECTION 505. *Withdrawal of Applications.*—An application may be withdrawn upon the written request of the applicant. Any application so withdrawn shall be endorsed "Dismissed at the Request of the Applicant." This endorsement shall be made by the clerk to the review committee if the withdrawal takes place before the hearing and by the chairman of the committee if the withdrawal takes place after the hearing has begun.

SECTION 506. *Nonappearance of Applicant.*—If, at the time of such hearing, the applicant is absent and no appearance is made on his behalf, the review committee shall, after a lapse of such period of time as it may consider proper and reasonable, have the name of such absent applicant called in the hearing room. If, upon such call, there is no response, and no appearance on behalf of such applicant, the committee may thereupon close the hearing as to such applicant, and, without further proceedings in the case, make an order dismissing the application, or continue the hearing to a later date.

SECTION 507. *Evidence.*—(a) The review committee shall permit the applicant, members of the appropriate county and community committees, and appropriate officers and agents of the Department, and all persons appearing on behalf of such parties, respectively, to give and produce relevant testimony and evidence, to cross-examine witnesses and to present argument on the testimony and evidence adduced at the hearing. The facts relating to any quota under review shall be ascertained in a simple and direct manner, and rules of evidence prevailing in courts of law or equity shall not be controlling. The chairman of the review committee shall administer an oath or affirmation to each person so testifying.

(b) Subject to the right of any requested cross-examination of the affiant, affidavits of general economic facts relating to the commodity in question shall be received and made part of the record of the proceedings for the purpose only of any applicable court review.

SECTION 508. *Burden of Proof.*—Upon all issues of fact raised by the application, the burden of proof shall be upon the applicant.

SECTION 509. *Time Consumed by Hearing; Briefs.*—(a) Full opportunity to be heard upon the issues raised by the application shall be afforded the applicant, the county committee, and appropriate officers and agents of the Department. The hearing, however, shall be concluded within such reasonable time as shall be determined by the review committee.

(b) Written briefs in triplicate for the consideration of the review committee may be filed with the clerk to the committee within such reasonable time after the conclusion of the hearing as shall be prescribed by the chairman of the committee.

SECTION 510. *Consolidation of Hearings.*—Wherever practicable, two or more applications relating to the same commodity and the same farm shall be consolidated, and heard at the same time on the same record.

SECTION 511. *Amendments.*—Upon due application, and within the discretion of the review committee, the right of amendment of the application and of all procedural documents in connection with any hearing, shall be granted upon such reasonable terms as the committee may deem right and proper.

SECTION 512. *Reopening Hearing.*—The review committee (a) on its own motion, or upon due application therefor, may, within fifteen days from the date of mailing to the applicant of a copy of the determination of the committee, reopen the hearing for the purpose of taking additional evidence or of adding any relevant matter or document, and (b) upon application by or on behalf of the Secretary of Agriculture made for any purpose within a period of thirty days from the date of mailing to the applicant of a copy of the determination of the committee, shall reopen the hearing.

SECTION 513. *Determination by Review Committee.*—(a) The committee shall make an order dismissing without further hearing any insufficient application or any application which was not filed within the period required for the filing of applications.

(b) As soon as practicable after hearing on any sufficient application filed within the period required for the filing of applications, the committee shall make a determination upon the application. If it is determined by the committee that the application should be denied, the committee shall make an order dismissing the application. If it is determined that the application should be granted in whole or in part, the committee shall establish the quota which it finds to be proper. Each determination made by the committee shall be in writing and shall contain specific findings of fact and conclusions, which shall be based solely upon the testimony and evidence adduced at or in connection with the hearing. The concurrence of two members of the committee shall be sufficient to make a determination. The written determination shall contain such subscription by each member of the committee as will indicate his concurrence therein or his dissent therefrom.

SECTION 514. *Service of Determination.*—A copy of such determination, or of any order dismissing the application, as provided in section 506 or 513 of this article, certified by the clerk to the review committee as a true and correct copy of the signed original, shall be served upon the applicant by depositing the same in the United States mails, registered and addressed to the applicant at his last known address. The copy of the determination or order shall contain at the top thereof the following statement: "To all persons who as operator,

landlord, tenant or sharecropper are interested in the farm for which this quota is established," and such statement shall constitute notice to all such persons. The clerk shall make a notation on the original determination or order of the date and place of such mailing. The clerk forthwith shall forward a copy of such determination or order to the Hearing Clerk, to the chairman of the State committee, and to the chairman of the county committee.

SECTION 515. *The Record.*—The record of the proceedings shall be prepared by the clerk to the review committee and shall consist of the following:

(a) All procedural documents in the case under review, including the application and written notice of hearing and any other written notice in connection with the application.

(b) Copies of such pertinent proclamations, announcements, general regulations, and apportionments, national, State, or county, issued by the Secretary of Agriculture in respect to acreage allotments and marketing quotas for the commodity in question, as may be presented at the hearing by or on behalf of the Secretary of Agriculture.

(c) Any stenographic transcript or written summary of the evidence made in accordance with these regulations, to which shall be annexed any documentary evidence received at the hearing. The review committee shall make such corrections in any stenographic transcript made as will make the text conform to the correct meaning. The corrections shall be made in such manner as will not obscure the original text of the transcript. In each case which is followed by the institution by the applicant of proceedings in court for a review of the determination of the review committee, (1) the committee, in the absence of any stenographic transcript of the testimony, shall prepare a written summary of the evidence, and (2) in addition to the items mentioned in (a) and (b) above, the record shall include a copy of the notice of the designation of the members of the review committee, and a copy of these regulations.

(d) The written determination of the review committee.

(e) A list of all papers included in the record, and a certificate by the clerk to the review committee, stating that such record is true, correct, and complete.

ARTICLE VI. COURT PROCEEDINGS

SECTION 600. *Duty of Review Committee.*—(a) The committee is required, by section 365 of title III of the act, upon the institution of any suit against the committee for the purpose of reviewing its determination upon any application for review of a quota, to certify and file in court a transcript of the record upon which the determination was made, together with the findings of fact made by the committee. Any suit for review is required to be instituted by the

applicant within fifteen days after a notice of the committee's determination is mailed to him by registered mail. Such suit may be instituted in the United States District Court or in any court of record of the State having general jurisdiction, sitting in the county or the district in which the applicant's farm is located. A bill of complaint in such proceeding may be served by delivering a copy thereof to any member of the committee.

(b) Upon the institution of such suit, the clerk to the review committee shall immediately send a telegram addressed to the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C. The telegram shall state the name of the plaintiff, the name of the court in which the suit is instituted, and the time within which appearances must be made in such suit in behalf of the committee. Any member of the committee served with papers in such suit shall forward such papers to the clerk to the committee, who shall in turn forward them to the Hearing Clerk. No member of the committee shall appear or permit any appearance in his behalf or in behalf of the committee, or take any action in respect to the defense of such suit, except in accordance with the instructions from or on behalf of the Secretary of Agriculture.

ARTICLE VII. FORMS AND CUSTODY AND INSPECTION OF RECORDS

SECTION 700. *Forms.*—The forms required in connection with the publication, notice and review of quotas shall be prescribed by the Secretary of Agriculture.

SECTION 701. *Custody.*—The clerk to the review committee shall carefully keep and preserve a record of all applications and of all proceedings relating to the review of such applications.

SECTION 702. *Filing of Papers by Hearing Clerk.*—The Hearing Clerk shall maintain a file of all records, documents and papers specifically required by these regulations to be sent to such clerk.

SECTION 703. *Inspection.*—All records, documents, and papers filed with the clerk to the review committee or the Hearing Clerk shall be available for public inspection at the respective places of filing.

ARTICLE VIII. CONSTRUCTION

SECTION 800. Nothing contained in these regulations shall be, or shall be construed to be, in derogation or modification of the rights of the Secretary of Agriculture or of the United States (a) to exercise any jurisdiction or powers granted by title III of the act or otherwise, or (b) to act in the premises in accordance with such jurisdiction and powers whenever such action is deemed advisable.

ARTICLE IX. PUBLIC NOTICE OF FOREGOING REGULATIONS

SECTION 900. Public notice of the issuance of the foregoing regu-
tions shall be given by (a) publishing the regulations in the
deral Register; and (b) posting a copy of the regulations on the
icial bulletin board of the Department at Washington, D. C.

Exhibit (8a)

Form 38–Tobacco 10. United States Department of Agriculture. Agricultural Adjustment Administration. June 1938.

State_____
Community_____
County_____

Listing Sheet

1938 FLUE-CURED TOBACCO MARKETING QUOTAS

Prepared by_____
Checked by_____
Approved for State Office by_____

	Cropland (quota sheet 1st entry, line 7(a))	Number families (quota sheet 1st entry line 8(a))	Adjusted cash crops other than flue-cured tobacco (quota sheet line 7(f))	1937 har. and div. acres flue-cured tobacco (quota sheet line 3, col. F)	Actual 1935 farm yield flue-cured tobacco (quota sheet line 1, col. G divided by line 1, col. C)	Normal marketings (quota sheet line 16)	Adjusted normal marketings (_____% of col. 6. See Sec. IV of instructions)	Minimum quota 3-year average marketings up to 3,200 lbs. (quota sheet, line 4, but not over 3,200 lbs.)	Excess (col. 7 minus col. 8)	Adjusted excess (_____% of col. 9. See Sec. IV of instructions)	Farm quota (col. 8 plus col. 10)	Past marketings deficiency (pounds by which col. 11 is less than smaller of line 6 or line 13 on quota sheet)	Additional quota from 4% fund (_____% of col. 12. See Sec. IV of instructions)	Farm quota plus additional quota (col. 11 plus col. 13)	Name and address of 1938 operator (quota sheet)	Serial no. (quota sheet)				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
1																				1
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3																				3
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25																				25
Total this sheet																				

Exhibit 8 (b)

Form 38—Tobacco 12. U. S. Department of Agriculture. Agricultural Adjustment Administration. Tobacco Section. July 193

_____
(County association and address)

NOTICE OF FARM MARKETING QUOTA FOR FLUE-CURED TOBACCO

(Pursuant to the Agricultural Adjustment Act of 1938, as amended)

_____ _____
(Name by which farm is commonly known) (Code and farm serial number)

To _____
(Name and address of operator)

and to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which this quota is established:

You are hereby given notice that a flue-cured tobacco marketing quota of _____ pounds has been established for the 1938–39 marketing year for the farm identified by the code and farm serial number and name shown above.

COUNTY COMMITTEE

Date _____, 1938. By _____
(Chairman or Secretary)

Review of Quotas.—Any farmer who is dissatisfied with the farm marketing quota established for his farm may, by making application within 15 days after the mailing to him of the notice of such quota, have such quota reviewed by a review committee composed of three farmers appointed by the Secretary of Agriculture. Unless such application is made within such 15 days the original determination of the farm marketing quota shall be final. All applications for review shall be made in accordance with regulations prescribed by the Secretary of Agriculture. These regulations are available at the office of the County Committee.

If the farmer is dissatisfied with the determination of the review committee he may, within 15 days after notice thereof is mailed to him by registered mail, institute proceedings to have the determination of the review committee reviewed by a court, as provided by Section 365 of the Act.

Exhibit 8 (c)

Form No. 38—A. A. A. 9. United States Department of Agriculture. Agricultural Adjustment Administration.

Oath of Review Committeeman

(Issued and executed with respect to Title III of the Agricultural Adjustment Act of 1938 and Article IV of the Regulations 38—A. A. A. 2)

I, _____, do solemnly swear (or affirm) that I
(Name in full, printed or typed)
will faithfully, justly, and honestly perform, to the best of my ability, all the duties devolving upon me as a member of a committee for the review of farm marketing quotas as established by the Secretary of Agriculture through local committees under and by virtue of Title III of the Agricultural Adjustment Act of 1938, So help me God.

_____
(Signature of appointee)

Subscribed and sworn to before me this ____ day of ____, A. D., 193__ at _____, _____
(City or place) (State)

[SEAL] _____

_____

Exhibit 8 (d)

Form No. 38—AAA 3. United States Department of Agriculture. Agricultural Adjustment Administration. _____
(Date)

Application for Review of Farm Marketing Quota

To _____, Secretary, _____ County, _____
(Agricultural Conservation Committee) (Post Office) _____, _____
(State)

The undersigned, _____, of _____
(Name in full) (Address in full)
_____, acting pursuant to Section 363 of Title III of the Agricultural Adjustment Act of 1938, as amended, and Article III, Sections 300 and 301 of Review Regulations, 38–AAA 2, issued by the Secretary of Agriculture, hereby applies for a review of the flue-cured
(Commodity)
tobacco farm marketing quota for farm identified by A. A. A. State and county code and farm serial No. _____.

The original notice of the farm marketing quota (or copy thereof certified as true and correct by the Secretary of the county committee) is attached hereto and made a part hereof.

This application is based upon the owing grounds:

Wherefore, the undersigned claims the marketing quota should have been established at _____.

_____
(Signature of Applicant)

In the Matter of the Application of _____ for review of farm marketing quota—A. A. A. State and county code and farm serial No. _____ No. _____ Commodity _____. The within application was received by me on the _____ day of _____, 19____. _____
Secretary, County Agricultural Conservation Committee.

Exhibit 8 (e)

Form No. 38—AAA 4. United States Department of Agriculture Agricultural Adjustment Administration. _____
(Date of Mailing)

NOTICE OF UNTIMELY FILING

Review Application No. _____

In the Matter of the Application of _____ for
(Full name)
review of the _____ farm marketing quota—A. A. A.
(Commodity)
State and county code and farm serial No. _____.
To _____, _____
(Full name of applicant) (Full address of applicant)

You are hereby advised that, according to my record, the application for review in the above-entitled case, filed by you with the undersigned on the _____ day of _____, 193_ appears to me not to have been made, as required by Review Regulations, 38—AAA 2, within fifteen days after _____ the date on which notice of the farm marketing quota was mailed to the operator of the farm identified above. Your attention is directed to Sections 500 and 513 of the Review Regulations, copy of which is enclosed. Your application will be referred to the Review Committee for appropriate action by it.

_____
Secretary, _____Count
(Agricultural Conservation Committee)
Address:
_____

Exhibit 8 (f)

Form No. 38—AAA 5. United States Department of Agriculture. Agricultural Adjustment Administration. _____
(Date of mailing)

NOTICE OF INSUFFICIENCY

Review Application No. _____

In the matter of the application of _____ for a review of the _____ farm marketing quota—A. A. A.
(Full name) (Commodity)
State and county code and farm serial No. _____.

To _____ _____
(Full name of applicant) (Full address of applicant)

You are hereby advised that the application for review in the above-entitled case, filed by you with the undersigned on the _____ day of _____, 19____, appears to be insufficient in view of the provisions of Article III, Section 301, of the Review Regulations, 38—AAA 2, for the reason(s) that _____
_____
_____
_____

A copy of the Review Regulations is enclosed.

An amended application containing the matter specified in said Article III, Section 301, of the Review Regulations should be filed by you with the undersigned within fifteen days after the date of the mailing of this notice. You will later receive notice of the action taken by the review committee on the application, if you do not file an amended application within the time prescribed above.

_____
_____ County
Secretary, Agricultural Conservation Committee.
Address:
_____

Exhibit 8 (g)

Form No. 38—AAA 6. United States Department of Agriculture. Agricultural Adjustment Administration. _____
(Date of mailing)

NOTICE OF HEARING

Review Application No. _____

In the matter of the application of _____ for a review of the _____ farm marketing quota—A. A. A.
(Full name) (Commodity)
State and county code and farm serial No. _____.

To _____ _____
(Full name of applicant) (Full address of applicant)

Take notice, that the _____ day of _____
19____, at ____ o'clock, ___ m., has been designated as the time, a
_____, as the place, for a hearing on t
application for review in the above-entitled case.

At such hearing you will be given full opportunity to pres
testimony and evidence and to be heard on all such matters a
issues presented by the filing of the application as, under Article
of Review Regulations, 38—AAA 2, may be considered by the revi
committee.

The review committee, at such hearing, will first pass upon a
question as to whether the application was filed within the tim
and in the manner, provided by Sections 300 and 301 of the Revi
Regulations, and, secondly, if it finds that the application was fil
in conformity with such regulations, will review the marketing quo
established for the farm.

_____
(Clerk to Review Committee)

Address:

_____

Exhibit 8 (h)

Form No. 38–AAA 7. United States Department of Agricultu
Agricultural Adjustment Administration.

ORDER OF DISMISSAL

Review Application No. _____

In the Matter of the application of _____ for
(Full name)
review of the _____ farm marketing quota–A. A. A. St
(commodity)
and county code and farm serial No. _____.

To _____
(Full name of applicant) (Full address of applicant)
and to all other persons who, as operator, landlord, tenant, or sha
cropper, are interested in the farm for which this quota
established.

The application for review in the above-entitled case having be
referred to the undersigned review committee, duly appointed
the Secretary of Agriculture pursuant to the provisions of Title I
of the Agricultural Adjustment Act of 1938, and

It appearing to the review committee that the application is n
in compliance with the requirements of Article III of Review Reg
lations, 38–AAA–2, for the reason(s) that _____
_____
_____
_____
_____

It is therefore ordered that the said application for review be, and the same is hereby, temporarily dismissed, and that this order of dismissal shall automatically become final at the expiration of fifteen days from the date of this order as indicated below unless, on or before such expiration date, the applicant files with the clerk to the review committee a written request for a hearing on said application. Upon the making of such request, the applicant shall be entitled to a hearing. At such hearing, the review committee will pass, first, upon the questions indicated above, and secondly, if it finds that the application was filed in conformity with said regulations, will review the marketing quota established for the farm.

A copy of this order, certified by the clerk to the review committee as a true and correct copy of the signed original, shall be served upon the applicant by depositing the same in the United States mails, registered and addressed to the applicant at his last-known address.

Done at _____ this _____ day of _____, 19____.

_____

_____

_____

Certified as a true and correct copy of the signed original.

_____

(Clerk to Review Committee)

Address:

_____

Exhibit 8 (i)

Form No. 38—A. A. A. 8. United States Department of Agriculture. Agricultural Adjustment Administration.

DETERMINATION OF REVIEW COMMITTEE

Review Application No. _____

In the Matter of the Application of _____ for a review of flue-cured tobacco farm marketing quota—A. A. A. State and county code and farm serial No. _____.

(Full name)

(Commodity)

To all persons who, as operator, landlord, tenant, or sharecropper, are interested in the farm for which this quota is established.

STATEMENT OF THE CASE, FINDINGS OF FACT, CONCLUSIONS, AND DETERMINATION

STATEMENT OF THE CASE

This case came on for hearing before the undersigned review committee, duly appointed by the Secretary of Agriculture pursuant to

the provisions of Title III of the Agricultural Adjustment Act of 1938, to hear the application for review of the farm marketing quota in this case. The hearing was conducted pursuant to Review Regulations, 38—A. A. A. 2, issued by the Secretary of Agriculture under the authority of said Act.

A notice of hearing to take place on the _____ day of _____, 19____, at _____ o'clock, ___ m., at _____, was duly (Place of hearing) given the applicant, and the hearing was held at said time and place.

The applicant was _____ present at the hearing and was represented by _____ (not)

There was afforded the applicant an opportunity to be heard and to produce evidence and testimony bearing upon such matters and issues presented by the filing of the application as, under said regulations, the review committee is entitled to consider.

The applicant claims that instead of _____, as established through the county committee, the farm marketing quota should have been established at _____, and the application sets forth the following grounds for this claim:

Upon the entire record of proceedings in this case, including the evidence and testimony introduced at the hearing and all exhibits filed in the case, the review committee makes the following findings of fact, conclusions, and determination:

FINDINGS OF FACT

CONCLUSIONS

DETERMINATION

The marketing quota for this farm should be _____ pounds.

A copy of this determination, certified by the clerk to the review committee as a true and correct copy of the signed original, shall be served upon the applicant by depositing the same in the United States mails, registered and addressed to the applicant at his last known address.

Done at _____, _____ this _____ day of _____, 19____.

_____

_____

_____

(Concurring)

_____

(Dissenting)

Certified as a true and correct copy of the signed original.

_____

(Clerk to Review Committee)

Address: _____

Exhibit 8½

Form ACP-71. United States Department of Agriculture. Agricultural Adjustment Administration. Washington, D. C.

ARTICLES OF ASSOCIATION OF COUNTY AGRICULTURAL CONSERVATION ASSOCIATION

(As amended July 28, 1938)

ARTICLE I—NAME

SECTION 1. The name of this Association shall be the Agricultural Conservation Association of _____ County, _____ (State) _____ hereinafter referred to as the "Association."

ARTICLE II—PURPOSE

SEC. 21. *Purpose.*—The purpose of the Association shall be to cooperate with the Secretary of Agriculture of the United States, hereinafter referred to as the "Secretary of Agriculture," the Agricultural Adjustment Administration, and other agencies of the Department of Agriculture in carrying out the provisions of Sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, the Agricultural Adjustment Act of 1938, the Federal Crop Insurance Act, the Sugar Act of 1937, and any amendments to such acts, and such other acts of Congress as the Secretary of Agriculture may designate. The Association shall not engage in other activity.

ARTICLE III—MEMBERSHIP

SEC. 31. *Qualification for Membership.*—Any person who is participating or cooperating in any program developed under any of said acts of Congress, or who has an interest in a farm and who states in writing on a form prescribed by the Agricultural Adjustment Administration his intention to participate or cooperate in any such program, with respect to any farm or ranch in the county shall be a member of the Association.

SEC. 32. *Termination of Membership.*—Any person otherwise a member of the Association shall cease to be a member thereof when it becomes evident that he cannot qualify for any payment or grant of aid in the county in connection with the programs under Acts of Congress listed in Section 21.

ARTICLE IV—LOCAL AND COUNTY ORGANIZATIONS

SEC. 41. *Local Administrative Areas.*—The county may be divided into local administrative areas, hereinafter referred to as communities. The boundaries of the communities shall be fixed by the Secre-

tary of Agriculture. No such community shall include more t
county or parts of different counties.

SEC. 42. *Delegates to the County Convention.*—Except in any
in which there is only one community committee, members
Association entitled to vote at the community election m
shall, at the time of the election of the community committe
from their number a delegate, and an alternate delegate to s
case of absence, disability, resignation, disqualification, or re
of the delegate, to a county convention for the election of the c
committee.

SEC. 43. *Community Committee Members and Alternates.*—
bers of the Association residing in a community and particip
or cooperating in any program currently administered in such
munity through the Association shall elect annually from their
ber a community committee of three members, of whom one
be elected as a chairman and one as vice-chairman. At the
election members of the Association residing in the community
also elect from their number first and second alternate membe
the community committee to serve in the order elected in case o
absence, disability, resignation, disqualification, or removal of
committeeman. With the prior approval of the Agricultural
justment Administration, a smaller number of members and a
nates may be elected to any community committee.

SEC. 44. *County Committee.*—A. The delegates to the county
vention from the several communities in a county shall, in an an
convention held at such time and at such place as may be prescri
by the Agricultural Adjustment Administration, elect the cou
committee for the county, which shall consist of three farmers
are members of the Association. One of such members shall
elected as chairman and one as vice-chairman of the county comm
tee. At the same election such delegates shall also elect from
members of the Association first and second alternate members
the county committee to serve in the order elected in case of
absence, disability, resignation, disqualification, or removal of
county committeeman.

B. If the county agricultural extension agent for the county is
elected secretary to the county committee, he shall be ex officio
member of the county committee but shall not have the power to vo

C. In any county in which there is only one community commit
the community committee shall also be the county committee.

SEC. 45. *Vacancies.*—In case of a vacancy in the office of chairm
of a county or community committee, the respective vice-chairm
shall become chairman; in case of a vacancy in the office of vi
chairman the third regular member shall become vice-chairman;
case of a vacancy in the office of the third regular member, the fi
alternate shall become the third regular member; and in case of
vacancy in the office of the first alternate, the second alternate sh
become the first alternate. In the event that a vacancy occurs in t
membership of the committee when no alternate is available to f

the vacancy, an election to fill such vacancies as exist in the membership and in the panel of alternates shall be held in the manner prescribed in this Article IV.

ARTICLE V—COMMITTEES, OFFICERS, AND EMPLOYEES

SEC. 51. *Eligibility of Committeemen, Delegates, and Alternates.*—A. Any member of the Association otherwise qualified shall be eligible to serve as a committeeman, delegate, or alternate only if such member—

(1) is engaged in farming or ranching and derives a substantial part of his income directly from farming or ranching;

(2) is a resident of the community or county for which the committee, delegate, or alternate is elected;

(3) has during the current year qualified for a payment or grant of aid in connection with a program administered by the Association in the county for which the committee, delegate, or alternate is elected or in the county in which he was engaged in farming or ranching during such year;

(4) is not holding, or is not, has not been during the current year, or does not become a candidate for, any Federal, State, or major county office filled by an election held pursuant to law;

(5) is not an officer or employee of any political party or organization;

(6) has not been removed for cause from office as committeeman, delegate, alternate, officer, or employee of any Association or like organization, or from public office, or convicted of any fraud, larceny, or embezzlement, or any felony.

B. Any member of the Association otherwise qualified who has been elected as a member of the community committee may also be elected as a delegate to the county convention or as a member of the county committee, or both, but, unless otherwise provided by the Agricultural Adjustment Administration, when a member of the community committee becomes a member of the county committee he shall cease to be a member of the community committee.

SEC. 52. *Secretary to the County Committee.*—The secretary to the county committee and the Association (hereinafter referred to as secretary to the county committee) shall be selected by the county committee, subject to the approval of the Agricultural Adjustment Administration. The secretary need not be a member of the Association, and may be the county agricultural extension agent but shall not be a member of the county committee.

SEC. 53. *Treasurer of the County Committee.*—A. The treasurer of the county committee and of the Association (hereinafter referred to as the treasurer of the county committee) shall be selected by the county committee, subject to the approval of the Agricultural Adjustment Administration. The treasurer need not be a member of the Association but shall not be the county agricultural extension agent or a member of the county committee. The offices of secretary

to and treasurer of the county committee may, in the discre
the county committee, be combined, except where the county a
tural extension agent shall have been selected as secretary
county committee.

B. The treasurer of the county committee shall furnish go
sufficient bond, faithfully to carry out the duties of his office
amount, terms, conditions, and form of the bond shall be fi
the Agricultural Adjustment Administration, and any cost o
nishing said bond shall be an item of expense of the Assoc
No person shall qualify as treasurer until the bond has been file
approved.

SEC. 54. *Secretary to Community Committee.*—A community
mittee shall select a secretary subject to the approval of the
cultural Adjustment Administration or may utilize the county
cultural extension agent or secretary to the county committe
such purpose.

SEC. 55. *Term of Office.*—A. The terms of office of all me
alternates, and officers of county and community committees
begin on January 1 after their election unless an earlier date is
fied for any area by the Agricultural Adjustment Administratio
shall continue for a period of one year or until their respectiv
cessors have been elected and have qualified. For the year 19
term of office of such members, alternates, and officers shall com
immediately upon their election and qualification.

B. The terms of office of delegates and their alternates shall
immediately upon their election and shall continue until thei
cessors have been elected.

SEC. 56. *Removal from Office.*—A. Any member or officer o
community committee or officer or employee of the county com
who fails to perform the duties of his office, is incompetent, or
mits fraud may be removed by the county committee subject t
approval of the Agricultural Adjustment Administration. I
county committee fails to act promptly in such case the Agricu
Adjustment Administration may remove such committeeman, o
or employee.

B. Any elected member of the county committee who fails t
form the duties of his office, is incompetent, or commits fraud
be removed by the Agricultural Adjustment Administration.

C. Any community or county committeeman who is removed
office shall have the right of appeal to the Agricultural Adjust
Administration for a review of the facts. Any individual wh
such review is cleared of charges shall not be considered inel
by reason of such removal within the meaning of Section 51A

SEC. 57. *Political Activity.*—A. No person who has been a c
date during the current year or who holds or becomes a cand
for a Federal, State, or major county office filled by an election
pursuant to law or who is an officer or employee of any pol
party shall be eligible to serve as a member, officer, or employ

a county or community committee or as a delegate to the county convention. The tenure of office of any committeeman, delegate, officer, or employee shall be automatically terminated and a vacancy shall exist when such person becomes such a candidate or accepts such a political position.

B. The office, clerical, mailing, or other facilities of the Association shall not be used for political purposes, nor shall any such facility be used in any way to support, assist, or oppose any political candidate or party or for any other purpose than those set forth in Article II.

ARTICLE VI—DUTIES OF COMMITTEES AND OFFICERS

SEC. 61. *Duties of County Committee.*—The county committee, subject to the general direction and supervision of the Agricultural Adjustment Administration, shall be generally responsible for the carrying-out of the purposes of the Association in the county. In so doing the committee shall—

(a) Determine farm acreage allotments, goals, normal yields, and other agricultural facts required under the programs formulated under the statutes listed in Section 21 for farms in the county, in accordance with regulations prescribed by the Secretary of Agriculture and instructions issued by the Agricultural Adjustment Administration;

(b) Select the secretary to and the treasurer of the county committee, provide for the employment of necessary personnel of the county committee, and fix the rate of compensation for such personnel, subject to the approval of the Agricultural Adjustment Administration;

(c) Supervise and direct the activities of the community committees established in the county;

(d) Review and certify, if otherwise correct, prescribed forms filed by, or on behalf of, members of the Association;

(e) Make available to members of the Association authorized information with respect to programs in which the Association is being utilized;

(f) Recommend to the Secretary of Agriculture changes in boundaries of communities;

(g) Recommend to the Agricultural Adjustment Administration changes in or additions to programs under the statutes listed in Section 21;

(h) Conduct such hearings and investigations as the Agricultural Adjustment Administration may request; and

(i) Perform such other duties as may be prescribed by the Agricultural Adjustment Administration.

SEC. 62. *Duties of Officers of the County Committee.*—A. *Chairman.*—The chairman of the county committee shall preside at meetings of the county committee and of the Association, supervise the work of the county committee, certify, if otherwise correct, such doc-

uments as may require his certification, and perform such other duties as may be assigned to him.

B. *Vice-Chairman.*—The vice-chairman of the county committee shall, in the absence of the chairman, serve as acting chairman of the county committee and in such capacity he shall perform such duties as would be performed by the chairman.

C. *Secretary.*—The secretary to the county committee shall be custodian of all the records and documents filed in the office of the Association. He also shall—

(1) Maintain an adequate supply of official forms required for use by members of the Association;

(2) Certify the results of all elections held in the county or communities within the county;

(3) Give public notice of the designation and boundaries of each community within the county not less than ten days prior to the election of community committeemen and delegates or alternates;

(4) Cause due notice to be given of all acreage allotments and such other information as may be required;

(5) Provide for the accessibility of information to the public as follows:

(a) Make available for public inspection in the Association office information pertaining to each farm within the county with respect to the number of acres in acreage allotments or goals that may be established for the farm, the average yields or productivity indexes established for the farm, and the acreage of range land and grazing capacity thereof for each ranching unit owned or operated in the county by members of the Association;

(b) Post conspicuously in the office of the Association a list of the names (but not the mail addresses) of all members of the Association receiving payments for cooperating in the authorized programs, together with the amount of the payment or payments received by each. This information shall be posted not sooner than 30 nor later than 60 days after payments have been received by the farmers;

(c) Post conspicuously in the office of the Association each year the names and addresses of all committeemen, officers, and employees of the Association, the amount received as pay by each as such committeeman, officer, or employee, and the total amount of the Association's administrative expenses for that year;

(6) Give due public notice at least five calendar days in advance of all meetings of the Association, all elections of community committeemen, and all conventions of delegates to elect the county committeemen; and

(7) Perform such other duties as may be assigned to him by the county committee or the Agricultural Adjustment Administration.

D. *Treasurer.*—The treasurer of the county committee shall have custody of all funds of the Association and shall disburse such funds only upon the authorization of the chairman of and secretary to the county committee, evidenced in writing on forms prescribed by

the Agricultural Adjustment Administration. Such treasurer shall also receive, hold, dispose of, and account for any other funds, negotiable instruments, or property, private or public, as provided in applicable rules, regulations, or instructions which are now or may hereafter become effective, authorizing him to receive and so handle such other funds, negotiable instruments, or property.

SEC. 63. *Duties of Community Committees.*—The community committee shall—

(a) Assist the county committee in determining acreage allotments, goals, normal yields, and other agricultural facts required under the programs listed in Section 21 for farms in the county;

(b) Inform farmers concerning the purposes and provisions of programs being administered in the county through the Association;

(c) Assist in arranging for and conducting the necessary community meetings of members of the Association; and

(d) Perform such other duties as shall be assigned to them by the county committee or the Agricultural Adjustment Administration.

SEC. 64. *Duties of Officers of Community Committees.*—A. *Chairman of community committee.*—The chairman of the community committee shall preside at all meetings of the community committee and of the members of the Association in the community. He shall supervise the work of the members of the community committee.

B. *Vice-Chairman.*—The vice-chairman of the community committee shall, in the absence of the chairman, perform such duties and functions as would be performed by the chairman.

C. *Secretary.*—The secretary to the community committee shall perform such duties as may be assigned to him by the secretary to the county committee or by the Agricultural Adjustment Administration.

ARTICLES VII—OFFICES

SEC. 71. *Office of the County Association.*—The office of the Association shall be located at such place in the county as may be selected by the county committee subject to the approval of the Agricultural Adjustment Administration.

ARTICLE VIII—CUSTODY AND PUBLICATION OF BOOKS AND RECORDS

SEC. 81. *Custody.*—All books, records, and documents of the Association shall be the property of the Agricultural Adjustment Administration and shall be maintained in good order in the office of the Association in the custody of the secretary to the county committee.

SEC. 82. *Inspection.*—The books, records, and documents of the Association shall be available for examination (1) at all times by officers and committeemen in the performance of their duties and by any authorized representative of the Secretary of Agriculture or of the Agricultural Adjustment Administration, and (2) at any reasonable time by any member of the Association insofar as his in-

terest under the programs administered by the Association may be affected. They shall not be available for inspection or examination by any other person, except with the prior approval of the Secretary of Agriculture or of the Agricultural Adjustment Administration.

ARTICLE IX—MEETINGS

SEC. 91. *Purpose.*—Meetings of any community committee or of the county committee shall be called only when necessary for the performance of the duties of the committee.

SEC. 92. *Time and Place of Meetings.*—Meetings of the county committee and of the Association may be held at the office of the Association or at any other suitable and readily accessible place within the county.

Meetings of delegates to the county convention shall be held at such time and at such place within the county as may be prescribed by the Agricultural Adjustment Administration.

SEC. 93. *Call and Notice.*—Due notice shall be given of each meeting of any community committee, the county committee, the county convention, or the Association. Any such committee meeting may be called by the chairman or acting chairman of the committee.

SEC. 94. *Quorum.*—A majority of any committee shall constitute a quorum for the transaction of business. A majority of the delegates elected to the county convention shall constitute a quorum for the election of county committeemen.

SEC. 95. *Voting.*—Each member of the Association, delegate to the county convention, or member of a community or county committee eligible to vote shall be entitled to only one vote. There shall be no voting by proxy.

ARTICLE X—DEDUCTIONS FOR ASSOCIATION EXPENSES

SEC. 101. *Deductions for Expenses and Notice Thereof.*—A. All or such part, as the Secretary of Agriculture may prescribe, of the estimated administrative expenses of the Association may be deducted pro rata from any payments or loans made to members of the Association in connection with any program with which the Association is concerned.

B. In each case where any administrative expenses are deducted in connection with a program current after June 30, 1938, each member of the Association shall be apprised, in the form of a statement on a form prescribed by the Agricultural Adjustment Administration accompanying the check evidencing the payment or loan, of the amount or percentage deducted from such payment or loan on account of such administrative expenses.

ARTICLE XI—AMENDMENTS

SEC. 111. These Articles of Association may be amended from time to time by the Secretary of Agriculture.

ARTICLE XII—ADOPTION OF ARTICLES

SEC. 121. These Articles of Association shall become effective upon approval by the Secretary of Agriculture.

SEC. 122. Nothing herein contained shall necessitate the reorganization of any community or county committee elected and constituted for the year 1938 prior to February 1, 1938, nor require the change of any procedure established for the filling of vacancies in such committees, except in counties where community boundaries are changed by the Secretary of Agriculture during 1938.

The foregoing Articles of Association are hereby approved, effective as of the date shown below.

H. A. WALLACE,
Secretary of Agriculture.
By _____
Duly Authorized Representative

Date: _____

Exhibit 9, a map, showing tobacco-growing districts of the United States, omitted by agreement of parties.

U. S. GOVERNMENT PRINTING OFFICE: 1938

In United States District Court, Middle District of Georgia, Valdosta Division

In Equity. No. 97

James H. Mulford et al., Plaintiffs,

vs.

Nat Smith et al., Original Defendants, and United States of America, Intervening Defendant

Opinion—Filed October 7, 1938

Sibley, Circuit Judge:

Some of the reasons supporting the foregoing Conclusions of Law may profitably be stated.

It is mainly urged for plaintiffs that the part of the Act in controversy is not a regulation of interstate and foreign commerce but is a regulation of all sales of tobacco by producers whether for export from the State or for manufacture and consumption within the State, and whether large or small; and that the real purpose and effect of it is to regulate and restrict the production of tobacco, which is a local activity. We may concede that agriculture, mining, manufacture and the like are in themselves local activities the regulation of which generally belongs to the States and not to Congress. So are sales made within the State not intended at the time to result in removing the goods from the State. But it may not be maintained that such intrinsically local matters do not under some circumstances become so interwoven with interstate and foreign commerce as to render it necessary and proper for Congress to affect or control them in order to regulate the interstate and foreign commerce which springs from them. The power of Congress to regulate such commerce is paramount and is very broad. If regulation of any kind is needed, the Congress and not the States must furnish it; and it may be of any kind not prohibited by other constitutional provisions. A State prior to the Union would so have regulated by virtue of its general police power. After the Union, this sphere of the police power vests in the Congress. Within its sphere, the power of Congress is in its nature a police power, to be exerted for the public good and in any way, not

prohibited, which Congress deems calculated to achieve
desired regulatory effect. This may involve, as ab
stated, the affecting or controlling what would usually p
tain to the State police power. Thus intrastate rates m
be cont-olled by Congress when so involved with int
state commerce as to make it necessary. Possession of i
toxicating liquor under prohibition was controlled by Co
gress though its constitutional power extended only to t
manufacture, transportation and sale thereof. Very e
tensive regulation of the production of distilled liquo
has always been allowed to secure payment of the feder
taxes on the liquors, though such production would otherwi
be only of State concern. But the law in controversy do
not directly regulate the production of tobacco. It do
not penalize or forbid the production of any amount t
grower pleases. He may do what he likes with it exce
to market it. Since most tobacco is grown only to be sol
the inability to sell the excess of a quota except at a lo
at least of all profit would tend to and probably would r
sult in the non-production of the excess so far as the grow
can prevent it. But the Act directly deals with the marke
ing, and not with the planting or production of tobacco.

Since marketing is an act of commerce, like transport
tion, if marketing in interstate and foreign commerce alo
had been regulated there would be no fair doubt of the pow
of Congress generally to regulate. The trouble arises fro
the inclusion of all sales of tobacco by producers. Congre
rests that inclusion on its right to regulate not particul
sales as such, but the commerce in tobacco as a great whol
because it is overwhelmingly a matter of interstate a
foreign traffic, and so unified in fact as that it must be dea
with generally and on a nationwide scale. The price to pr
ducers, the stability of which is asserted by Congress to be
main concern both because the support of hundreds of tho
sands of persons depends on it, and because it in turn co
trols the amount of tobacco which will be grown and if t
low may destroy the industry altogether, is a countrywi
matter. No State acting alone could wisely or effectivel
regulate the situation. Conflict and reprisals would almo
certainly follow State effort. In Georgia all tobacco, exce
a negligible amount, is sold for export from the State, a
this is predominantly true in all the States which produ
tobacco. The commerce in it is in fact overwhelming
interstate and foreign. The stable supply to meet the stab

demand and to result in a stable price which Congress seeks to achieve can in its judgment practically be reached only by a countrywide regulation controlling the entire market. Courts may not overrule the considered judgment of Congress on the point, where the conclusion is not clearly irrational and arbitrary. They must enforce the law without questioning its wisdom or effectiveness. Should Congress, (except in a case of clear usurpation), seek unjustifiably to control matters which ought to remain with the States the issue becomes so far political that solution might better be had in the elections as of a public question between the States and the Union than in the courts at the instance of private litigants.

The Act is not a price-fixing one. The price is still fixed by the will of buyer and seller, and more remotely by the circumstances that normally affect prices. It seeks merely to stabilize one of those circumstances, to-wit, the available marketable supply for the year. Protective tariffs affect prices similarly. It does not take the property of any producer. It affects the value of his excess, if intentionally or unintentionally he makes more tobacco than his quota, for he has to hold it for another quota year, or else use it in some other way. In so far as it takes his liberty of selling what is his own for what he can obtain for it, or indirectly affects his liberty to plant what he pleases on his own land, the taking is not without due process of law but is the ordinary restraint of liberty which accompanies every exercise of police power for the public good. One may be prohibited by competent authority from raising or selling tobacco if by so doing he injures others. Sec utere tuo ut alienum non laedas, a nounless maxim, qualifies both the property and the liberties of everyone.

This particular Act does not fail for vagueness in the standards for fixing quotas, nor leave everything to the Secretary so as to make him legislator. The language of Sect. 213(b) refers to farm quotas, and in speaking of "past marketing of tobacco" means the marketing from each several farm, and so in reference to considering "land, labor and equipment available for production of tobacco" reference is made to each farm. These are the things that one would naturally consider in fixing fair quotas for individual farms, and they furnish a sufficient legislative guide, and they were satisfactorily applied to these plaintiffs.

The application of a quota in 1938 after crop preparat had begun may entail some hardship and loss but does deprive of property without due process of law. When Act was passed in February, preparation had not proceed far. Even in March when the referendum made it certa there would be a quota it was not too late to plant so of the tobacco land in other crops, at a loss of some of t young plants. The Act does not penalize one for havi prepared too much land or having started too many you plants, but only for selling too much tobacco months afte ward. Had the quotas been fixed in December, as hereaft they will be, many producers would have produced an e cess anyhow, the season having been unusually favorab That chance always must exist. If the conduct to be pena ized has not happened and may be avoided when the pen law is passed there is no cons-itutional transgression a though some preparation may have been made to do Witness the fate of liquor stocks when laws prohibiting the sale were passed. The excess tobacco, it is argued, wou spoil if kept unless further treated, and plaintiffs had facilities for treating it. But all that is sold is thus treat by the purchasers. The growers, foreseeing excesses, cou have arranged to have their unsalable tobacco processe either by shipping it elsewhere or by converting a war house into a processing plant. At any rate it was the burden.

The penalties incurred by wilful sales this year of exce tobacco must be paid.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

CONCURRING OPINION—Filed October 7, 1938

On the Bill of Complaint and the Stipulation of Fac made by the Complainants and the Defendants, I believe t decree I am signing is proper.

I concur in the result reached by Judge Sibley, but n entirely in the reasoning or opinion.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—Filed October 7, 1938

The plaintiffs, numerous producers of tobacco in Georgia and Florida, brought in a State court a bill quia timet against the defendants, the tobacco warehousemen doing business in Valdosta, Ga., to and through whom the plaintiffs intended to market their tobacco in the selling season of August, 1938, to enjoin the defendants from retaining and paying over to the United States as a penalty one-half of the purchase price of tobacco marketed in excess of the several quotas of the plaintiffs fixed under Sections 311, 312, 313 and 314 of the Agricultural Adjustment Act of 1938. The case was removed to this court as one arising under the law regulating commerce. 28 U. S. C. A. Sec. 41(8). The bill was amended to seek a decree declaring unconstitutional and void the said sections of the Agricultural Adjustment Act as beyond the power of Congress, and as delegating legislative power to the Secretary of Agriculture, and especially as applied to the crop of 1938 because operating to take property without due process of law. The United States intervened to defend the Act. The case was submitted to a court of three judges upon a stipulation of the evidentiary facts.

Findings of Fact

The facts as stipulated are true. The important conclusions are:

The plaintiffs have each marketed in August, 1938, tobacco produced by them in excess of quotas for this season fixed for their several farms pursuant to the Agricultural Adjustment Act and the Regulations made under it by the Secretary of Agriculture. No complaint is made of the fairness of the quotas if there was authority to make quotas. The penalties for the excess marketing have under order of the Court been paid into Court to await decision as to their disposition.

The tobacco of plaintiffs was sold to buyers for shipment to other States and to foreign countries. The manufacture of tobacco in Georgia is negligible. The Florida plaintiffs

brought their tobacco into Georgia to market it at the wa
houses, where sales are customarily made, as a sort
tobacco exchange.

The tobacco business as a whole is essentially a matt
of interstate and foreign commerce. A number of Stat
produce some tobacco, but the bulk of it is produced in t
six States of Virginia, Kentucky, North Carolina, Sou
Carolina, Georgia and Florida. It is consumed everywher
It is manufactured extensively in Virginia and North Car
lina and in many non-producing States. Over half of t
tobacco produced is exported to foreign countries. It is so
by producers in market towns, for the most part in war
houses maintained for the purpose, during seasons of on
a few weeks. The price is fixed, by the buyers, main
manufacturers and exporters, who are supposed to compe
as purchasers. The demand is practically stable from ye
to year, but the supply of tobacco is very variable, depen
ing not only on the acreage planted but also on unco
trollable factors of weather, pests and misfortune. Tobac
when further cured and packed away will keep indefinite
and is improved by aging; and manufacturers mainta
large stocks of it. When the supply does not exceed t
normal demand the manufacturers compete in buying a
the price is relatively high. When the supply is excessi
the buyers hold off, the price is greatly depressed, som
times below the cost of production. Average prices
recent years have varied from twenty-seven cents per pou
to as low as eight cents. The price variations are not loc
but countrywide.

Commerce in tobacco in the United States is very e
tensive and of public importance. Over 700,000 families a
engaged in producing it and over 300,000 in producing t
kind of tobacco quotas on which are here involved. Arou
a billion pounds are produced annually and the manufa
tured product exceeds in value a billion dollars. Befo
passing the Act in question Congress made very thorou
and deliberate investigation of the business, holding ma
hearings about it. The Act was not hastily passed but repr
sents the considered and matured conclusion of the Legisl
ture. As stated in Section 311 it was found as a fact th
"the marketing of tobacco constitutes one of the great bas
industries of the United States with ramifying activiti
which directly affect interstate and foreign commerce
every point, and stable conditions therein are necessary

the general welfare. Tobacco produced for market is sold on a nationwide market and with its products moves almost wholly in interstate and foreign commerce from the producer to the ultimate consumer * * *. The disorderly marketing of such abnormally excessive supplies affects, burdens and obstructs interstate and foreign commerce'' in ways stated. ''Whenever an abnormally excessive supply of tobacco exists * * * the operation of the provisions of this Part becomes necessary in order to promote, foster and maintain an orderly flow of such supply in interstate and foreign commerce.'' If a court may question such legislative fact findings, in this case the legislature has found truly.

An abnormally excessive supply of tobacco was in prospect when the Act was passed on Feby. 18, 1938. The National quota was fixed and proclaimed on that very date, and on March 16 submitted in a referendum to the producers, who approved it by a vote of about six to one, though only 62% of Georgia producers voted for it. How the plaintiffs voted does not appear. The State quotas at once followed by mathematical computation. The Farm quotas were not definitely fixed till June. Some adjustments were made in these as late as August, but they were enlargements and did not prejudice any plaintiff. The quotas were fair and according to the Act and Regulations. When the Act was passed the plaintiffs had planted their seeds in beds, and the plants were probably up and growing. When the referendum was held in March the land had been prepared and fertilized, though most plants were not transplanted till about April 1. When the farm quotas were definitely made in June the crop had been cultivated and was approaching maturity. When the marketing was done in August each plaintiff knew what his quota was.

Conclusions of Law

1. The provisions of Sects. 312, 313 and 314 of the Agricultural Adjustment Act of 1938 are regulations of interstate and foreign commerce within the power given Congress by the Constitution.

2. The provisions as to fixing farm quotas in Sect. 313 (b) are not so indefinite as to deny due process of law or to vest unconstitutionally legislative power in the Secretary of Agriculture.

3. The provisions of Sect. 312 (d) for making quot for the 1938 crop while entailing some hardship on growe who had already planted their crops, do not operate to d prive them of property without due process of law.

Samuel H. Sibley, United States Circuit Judge. C. E Kennamer, United States District Judge. — ——, United States District Judge.

[File endorsement omitted.]

In United District Court, Middle District of Georgia Valdosta Division

In Equity. No. 97

James H. Mulford et al., Plaintiffs,

vs.

Nat Smith et al., Original Defendants, and United State of America, Intervening Defendant

Decree—Filed October 7, 1938

This cause came on for final hearing upon an agreed stat ment of facts before a Court composed of Honorabl Samuel H. Sibley, United States Circuit Judge, Honorabl Bascom S. Deaver and Honorable Charles B. Kenname District Judges, and was argued by counsel, and decisio reserved. The Court being now fully advised in pursuan of Findings of Fact and Conclusions of Law filed herewit it is considered and decreed by the Court:

1. That Sections 312, 313 and 314 of the Agricultur Adjustment Act of 1938, exhibited in the petition, are co stitutional and valid as against the attacks made by th plaintiffs thereon.

2. That the application of the Act to the marketing seas of 1938 is not unconstitutional, but the quotas fixed ther under for the marketing of plaintiffs' tobacco are valid an binding, and marketing by them of tobacco in excess of suc quotas may validly be penalized according to the Act.

3. The injuntion prayed for is denied, and the restrainin order heretofore granted is dissolved. The funds in th hands of the Clerk are to be returned to the parties wh

paid them in, for disposition according to law. Should any dispute arise touching said fund, jurisdiction is reserved to hear and determine it.

4. The bill is dismissed, the costs are adjudged against the plaintiffs in favor of the defendants, to be taxed by the Clerk.

This October 5, 1938.

Samuel H. Sibley, United States Circuit Judge. C. B. Kennamer, United States District Judge. ——, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed October 21, 1938

To the Said Honorable Court:

Plaintiffs in the above stated cause, being aggrieved by the final order and decree entered on October 7th, 1938 in the above entitled cause, do hereby appeal from said final order and decree to the Supreme Court of the United States, and they pray that their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said final decree was based and made may be sent to the Supreme Court of the United States.

A. J. Little, Valdosta, Ga.; C. A. Avriett, Jasper, Fla.; J. L. Blackwell, Live Oak, Fla.; L. E. Heath, Douglas, Ga., Attorneys for Plaintiffs.

ORDER ALLOWING APPEAL

It is ordered that the appeal be allowed as prayed for. This 18th day of October, 1938.

Samuel H. Sibley, United States Circuit Judge. Charles B. Kennamer, United States District Judge. Bascom S. Deaver, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed October 21, 1938

Plaintiffs-appellants assert that the Statutory District Court erred in rendering final judgment and decree against them signed on October 5, 1938 and entered of record on October 7, 1938, and say that in said final judgment and decree the said Court erred in the following particulars:

(1) In holding that Sections 312, 313 and 314 of the Agricultural Adjustment Act of 1938 constitute a regulation of the marketing of tobacco within the power of Congress to regulate commerce with the foreign nations and among the several States, against the contention of the Plaintiffs-appellants that the provisions of said section constitute a regulation of the production of tobacco in invasion of the powers reserved to the States under the Tenth Amendment of the Constitution of the United States.

(2) In holding that Sections 312, 313 and 314 of the Agricultural Adjustment Act of 1938 constitute a valid regulation of all marketing of tobacco within the power of congress to regulate commerce with the foreign nations and among the several States, against the contention of the plaintiffs-appellants that the disposition of tobacco by producers by sale, barter, or exchange is a transaction in intrastate commerce, and such regulation of all such marketing involves an invasion of the powers reserved to the States under the Tenth Amendment of the Constitution of the United States.

(3) In holding that the provisions of sub-section (c) of Section 313 of the Agricultural Adjustment Act of 1938 relating to the establishment of marketing quotas for tobacco farms, are not so vague and indefinite as unconstitutionally to vest in the Secretary of Agriculture legislative power, against the contention of the plaintiff-appellant that the provisions of said sub-section do not prescribe a sufficient standard for the establishment of farm marketing quotas of tobacco and, therefore, vest in the Secretary of Agriculture legislative power in violation of Article 1, Section 1 of the Constitution of the United States.

(4) In holding that the provisions of sub-section (c) of Section 313 of the Agricultural Adjustment Act of 1938, relating to the establishment of marketing quotas for tobacco farms, are not so vague and indefinite as to constitute a denial of due process of law to the plaintiffs-appellants under the Fifth Amendment of the Constitution of the United States, against the contention of the plaintiffs-appellants that under said provisions there is not sufficient protection to the plaintiffs-appellants against unreasonable, arbitrary and capricious action on the part of the Secretary of Agriculture in the establishment of such farm marketing quotas.

(5) In holding that Sections 312, 313 and 314 of the Agricultural Adjustment Act of 1938 are valid as against the attacks thereon made by the plaintiffs-appellants, against the contention of the plaintiffs-appellants that said subsections constitute, in substance and in effect, a statutory plan to regulate the production of tobacco and all marketing of tobacco in invasion of the powers reserved to the States under the Tenth Amendment of the Constitution of the United States; involve an invalid delegation of legislative power to the Secretary of Agriculture in violation of Article 1, Section 1 of the Constitution of the United States; and deny to the plaintiffs-appellants due process of law in violation of the Fifth Amendment of the Constitution of the United States.

(6) In holding that the provisions of sub-section (d) of Section 312 of the Agricultural Adjustment Act of 1938, whereby farm marketing quotas for tobacco were established for the 1938-1939 marketing year, while entailing some hardship upon producers who had planted their crops of tobacco, do not operate to deprive the plaintiffs-appellants of their property without due process of law, against the contention of the plaintiffs-appellants that the establishment of said marketing quotas, after the planting and cultivation of such tobacco, render it impossible for the plaintiffs-appellants to take into consideration at the time of planting and cultivation possible restrictions on marketing and thereby avoid the expense of producing tobacco in excess of marketing quotas.

(7) In denying the relief prayed for in the bill of complaint and in ordering the Clerk of the District Court to tax the costs against the plaintiffs-appellants in favor of the defendants-appellees.

Wherefore, plaintiffs-appellants pray that the errors assigned above be reviewed and corrected by the Supreme Court of the United States, and that the judgment and decree entered in this case be reversed.

A. J. Little, Valdosta, Ga.; C. A. Avriett, Jasper, Fla.; J. L. Blackwell, Live Oak, Fla.; L. E. Heath, Douglas, Ga., Attorneys for the Plaintiffs-Appellants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR STAY—Filed October 21, 1938

To the Said Honorable Court:

Plaintiffs in the above stated cause, having presented a petition for the allowance of appeal to the Supreme Court of the United States and an appeal bond having been executed and approved, and a separate typewritten statement having been submitted disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree of the trial court, said plaintiffs now move for a stay of the order of said Court dissolving the restraining order theretofore granted, and directing that the funds in the hands of the Clerk be returned to the parties who paid them in for disposition according to law; and pray that said portion of said order be stayed until the final disposition of said cause, and that said funds remain in the registry of the Court pending the final disposition of this cause or the further order of the Court.

A. J. Little, Valdosta, Ga.; C. A. Avriett, Jasper, Fla.; J. L. Blackwell, Live Oak, Fla.; L. E. Heath, Douglas, Ga., Attorneys for Plaintiffs.

Service of a copy of the foregoing motion for a stay of the order and decree of this Court entered Oct. 7th, 1938,

is hereby acknowledged, and the granting of the relief prayed for in said motion is hereby assented to.

This the 18th day of October, 1938.

Franklin & Eberhardt, Attorneys for Defendant Warehousemen. John S. L. Yost, T. Hoyt Davis, Attorneys for United States, Intervening Defendant.

ORDER

It is ordered that the above motion for stay be allowed as prayed for.

This the 18th day of October, 1938.

Samuel H. Sibley, United States Circuit Judge. C. B. Kennamer, United States District Judge. Bascom S. Deaver, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

WAIVER OF CITATION, ETC.—Filed October 21, 1938

Issuance and service of citation to the appellees upon appeal in the above entitled cause is hereby waived and service of the following papers is acknowledged;

1. Petition for, and order allowing, appeal.

2. Assignment of errors.

3. Jurisdictional statement under Rule 12 of the Revised Rules of the Supreme Court of the United States.

The right to file with the Clerk of the Supreme Court of the United States a statement against the jurisdiction of said Court in this case, provided for in paragraph 3 of said Rule 12, is hereby waived and notice of the provisions of

said paragraph 3 of said Rule given by the appellants is hereby acknowledged.

This 18th day of October, 1938.

Franklin & Eberhardt, Attorneys for Defendant Warehousemen. John L. S. Yost, T. Hoyt Davis, Attorneys for the United States, Intervening Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD ON APPEAL—Filed November 26, 1938

It is Hereby Stipulated and Agreed by and between the parties hereto, through their respective solicitors, that the transcript of record to be filed in the Supreme Court of the United States pursuant to the appeal heretofore allowed herein shall include the following:

(1) Original bill of complaint filed in the Superior Court of Lowndes County, Georgia, July 27, 1938.

(2) Restraining order issued by the Superior Court of Lowndes County, Georgia, July 27, 1938.

(3) Rule to appear and answer bill of complaint on the third Monday in November, 1938, entered by Superior Court of Lowndes County, Georgia, July 27, 1938.

(4) Return made by J. L. Spivey, Sheriff of Lowndes County, Georgia, on the 27th day of July, 1938.

(5) Petition for removal of case to the District Court of the United States for the Middle District of Georgia, filed in the Superior Court of Lowndes County, Georgia, on August 5, 1938.

(6) Removal bond, filed in the Superior Court of Lowndes County, Georgia, August 5, 1938.

(7) Notice to plaintiffs of petition for removal and acknowledgment of service thereof, filed in the Superior Court of Lowndes County, Georgia, August 5, 1938.

(8) Petition of the United States of America for leave to intervene as a party defendant filed in the United States District Court for the Middle District of Georgia, August 18, 1938.

(9) Order of District Court permitting United States of America to intervene as a party defendant, entered August 18, 1938.

(10) Request of Honorable Bascom S. Deaver for designation of two other judges to hear case, and order of Honorable Rufus E. Foster thereon, filed August 26, 1938.

(11) Petition of plaintiffs to continue restraining order in force and effect, filed August 26, 1938.

(12) Order of United States District Court continuing restraining order in effect, as modified therein, entered Aug. 26, 1938.

(13) Amendment to bill of complaint, filed August 29, 1938.

(14) Answer of United States of America to bill of complaint and amendment thereto, filed September 2, 1938.

(15) Answer of defendants to bill of complaint and amendment thereto, filed September 3, 1938.

It is Further Stipulated that items (1) to (15), inclusive, above, are correctly set forth in the printed document entitled "Pleadings of Parties and Orders of Court", attached hereto, and that said printed document may be incorporated in the transcript as a part thereof in lieu of any other or further reference to, or copies of, the pleadings and orders therein mentioned, and, further, that the references contained in the said printed document to the proceedings in this cause in the Superior Court of Lowndes County, Georgia, and in the United States District Court for the Middle District of Georgia are true, as therein stated, and are hereby made a part of said transcript of record.

(16) Stipulation of facts and evidence, with exhibits thereto, filed September 19, 1938.

It is Further Stipulated that the printed copy of the stipulation of facts and evidence and the printed copy of exhibits thereto, attached hereto, are true and correct copies of said stipulation and of the material exhibits attached thereto, and that said printed copies may be incorporated in the transcript as a part thereof in lieu of any other or further reference to, or copies of, the said stipulation and exhibits.

(17) The petition for, and order allowing appeal, filed October 21, 1938.

(18) The jurisdictional statement under Rule 12 of the revised rules of the Supreme Court of the United States,

together with the findings of fact and conclusions of la and the opinion of the court, attached thereto.

(19) The waiver of issuance and service of citation to th appellees upon appeal and acknowledgment of service o appeal papers and waiver of right to file opposing jurisdic tional statement.

(20) Plaintiffs-appellants' motion for stay of judgmen and order of court allowing same, filed October 21, 1938.

(21) Assignment of errors.

(22) Final decree, entered October 7, 1938.

(23) This stipulation as to the contents of the transcript of record.

The Clerk of the above entitled Court is requested t transmit to the Clerk of the Supreme Court, Washington, D. C., only the papers designated herein.

This stipulation is made and entered into pursuant to Rule 10 of the Supreme Court of the United States.

Dated this 23rd, day of November, 1938.

A. J. Little, J. L. Blackwell, C. A. Avriett, L. E. Heath, Solicitors for Plaintiffs-Appellants. T. Hoyt Davis, United States Attorney, by John P. Cowart, Asst. United States Attorney; John S. L. Yost, Special Assistant to the Attorney General; Franklin & Eberhardt, by O. W. Franklin, Solicitors for Defendants-Appellees.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

Statement of Points to be Relied on and Designation of Parts of Record to be Printed—Filed December 5, 1938

STATEMENT OF POINTS

Come now the Appellants in the above entitled cause, and state that the points upon which they, jointly and severally intend to rely in this Court in this case are as follows:

Point 1

That the Agricultural Adjustment Act of 1938 is un constitutional, null and void, and that specifically Section

312, 313 and 314 of said Act are unconstitutional, null and void for the following reasons:

(a) Said Act as a whole is a statutory plan to regulate and control the production of major agricultural products within the States, a matter beyond the powers delegated to Congress, in invasion of the powers reserved to the States under the Tenth Amendment to the Constitution of the United States.

(b) Sections 312, 313 and 314 of said Act, as part of said plan, embrace provisions regulating and controlling the production and marketing by producers of all tobacco produced within the several States, which are matters beyond the powers delegated to the federal government, in invasion of the powers reserved to the States under the Tenth Amendment to the Constitution of the United States.

See Assignments of Error, Numbers 1, 2, and 5.

Point 2

That the provisions of sub-section (c) of Section 313 of the Agricultural Adjustment Act of 1938 relating to the establishment of marketing quotas for tobacco farmers are unconstitutional, null and void for the following reasons: The provisions of said sub-section fixing the basis or standards by which said farm quotas are established are so vague, uncertain and indefinite as unconstitutionally to vest in the Secretary of Agriculture legislative powers in violation of Article 1, Section 1 of the Constitution of the United States, and furnish no protection to producers of tobacco against the unreasonable, arbitrary and capricious action on the part of the Secretary of Agriculture in the establishment of said farm marketing quotas, thereby constituting a denial of due process of law to producers in violation of the Fifth Amendment to the Constitution of the United States.

See Assignment of Errors, Numbers 3, 4 and 5.

Point 3

Said Act was unconstitutionally applied to the 1938 tobacco crop of Appellants, for the reason that the establishment of said marketing quotas for the farms of appellants, subsequent to the planting, cultivation and gathering of their respective tobacco crops, during all of which time appellants did not know and had no means of ascertaining even the approximate number of pounds of tobacco each might raise and sell free of penalty, rendered it impossible for appel-

lants to take into consideration at the time of planting and cultivation possible restrictions on marketing and avoid the labor and expense of producing tobacco in excess of marketing quotas, thereby depriving appellants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

See Assignments of Error, Numbers 6 and 5.

Point 4

For all the above reasons the trial Court erred in denying the relief prayed for in the bill of complaint and in taxing the costs against appellants.

See Assignments of Error No. 7.

DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR CONSIDERATION OF THE POINTS TO BE RELIED ON

And the appellants further state that the entire record as set forth in the "Stipulation as to Contents of Transcript of Record on Appeal" is necessary for the consideration of the points above specified and that the whole of the record as filed in this Court must be prepared for the consideration of the cause.

Respectfully submitted, A. J. Little, C. A. Avriett, J. L. Blackwell, L. E. Heath, Solicitors for Appellants.

Service of the above and foregoing "Statement of Points and Designation of the Record is hereby acknowledged, copy received, and all other further service or notice is hereby waived.

This the 2 day of December, 1938.

Franklin & Eberhardt, O. W. Franklin, Solicitors for Nat Smith, et al. Robert H. Jackson, Solicitor General, for the United States of America, Appellee.

[File endorsement omitted.]

Endorsed on cover: Enter L. E. Heath. File No. 42,990. M. Georgia, D. C. U. S. Term No. 505. James H. Mulford, et al., appellants, vs. Nat. Smith, et al. Filed December 5, 1938. Term No. 505, O. T., 1938.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916

No. 585

JAMES H. MULFORD ET AL.,

Appellants,

vs.

NAT SMITH ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA.

STATEMENT AS TO JURISDICTION.

A. J. Little,
C. A. Averitt,
J. L. Blackwell,
L. E. Heath,
Counsel for Appellants.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

IN EQUITY

No. 97

JAMES H. MULFORD ET AL.,

Plaintiffs,

vs.

NAT SMITH ET AL., ORIGINAL DEFENDANTS, AND UNITED STATES OF AMERICA, INTERVENING DEFENDANT.

JURISDICTIONAL STATEMENT UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, James H. Mulford *et al.*, plaintiffs-appellants in the above entitled cause, present the following statement in connection with their petition for the allowance of an appeal to the Supreme Court of the United States from the decree entered herein on October 7, 1938:

(a) The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Sec-

tion 3 of the Act of August 24, 1937, Public Number 352, 75th Congress, 50 Stat. 752, U. S. C. A., Title 28, Section 380 (a).

(b) There is involved in this case the validity of certain provisions of the Act of Congress, approved February 16, 1938, Public Number 430, 75th Congress, 52 Stat. 31, as amended, U. S. C. A., Title 7, Sections 1281, *et seq.*, the pertinent provisions of which read as follows:

Declaration of Policy.

Sec. 2. It is hereby declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices.

Title III—Loans, Parity Payments, Consumer Safeguards, and Marketing Quotas.

Subtitle A—Definitions, Loans, Parity Payments, and Consumer Safeguards.

Definitions.

Sec. 301. (a) General Definitions.—For the purposes of this title and the declaration of policy—

(1) "Parity", as applied to prices for any agricultural commodity, shall be that price for the commodity which will

to the commodity a purchasing power with respect to
les that farmers buy equivalent to the purchasing
er of such commodity in the base period; and, in the case
ll commodities for which the base period is the period
ust 1909 to July 1914, which will also reflect current
rest payments per acre on farm indebtedness secured by
estate, tax payments per acre on farm real estate, and
ght rates, as contrasted with such interest payments, tax
nents and freight rates during the base period. The
period in the case of all agricultural commodities ex-
tobacco shall be the period August 1909 to July 1914,
in the case of tobacco, shall be the period August 1919
ly 1929.

) "Parity", as applied to income, shall be that per
a net income of individuals on farms from farming
ations that bears to the per capita net income of indi-
als not on farms the same relation as prevailed during
eriod from August 1909 to July 1914.

) The term "interstate and foreign commerce" means
marketing, trade, and traffic between any State or
itory or the District of Columbia or Puerto Rico, and
lace outside thereof: or between points within the same
e or Territory or within the District of Columbia or
to Rico, through any place outside thereof; or within
Territory or within the District of Columbia or Puerto

) The term "affect interstate and foreign commerce"
s, among other things, in such commerce, or to burden
obstruct such commerce or the free and orderly flow
of; or to create or tend to create a surplus of any agri-
ral commodity which burdens or obstruct such com-
e or the free and orderly flow thereof.

) The term "United States" means the several States
Territories and the District of Columbia and Puerto

) The term "State" includes a Territory and the Dis-
of Columbia and Puerto Rico.

(7) The term "Secretary" means the Secretary of Agriculture, and the term "Department" means the Department of Agriculture.

(8) The term "person" means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of a State.

(b) Definitions Applicable to One or More Commodities.—For the purposes of this title—

(3) (C) "Carry-over" of tobacco for any marketing year shall be the quantity of such tobacco on hand in the United States at the beginning of such marketing year, which was produced in the United States prior to the beginning of the calendar year then current, except that in the case of cigar-filler and cigar-binder tobacco the quantity of type 46 on hand and theretofore produced in the United States during such calendar year shall also be included.

(6) (A) "Market", in the case of cotton, wheat, and tobacco, means to dispose of by sale, barter, or exchange, but, in the case of wheat, does not include disposing of wheat as premium to the Federal Crop Insurance Corporation under Title V.

(D) "Marketed", "marketing", and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used.

(7) "Marketing year" means, in the case of the following commodities, the period beginning on the first and ending with the second date specified below:

Tobacco (flue-cured), July 1-June ;
Tobacco (other than flue-cured), October 1-September 30;

(10) (B) The "normal supply" of tobacco shall be a normal year's domestic consumption and exports plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports as an allowance for a normal carry-over.

(11) (B) "Normal year's domestic consumption", in the case of cotton and tobacco, shall be the yearly average quan-

tity of the commodity produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

(12) "Normal year's exports" in the case of corn, cotton, rice, tobacco, and wheat shall be the yearly average quantity of the commodity produced in the United States that was exported from the United States during the ten marketing years (or, in the case of rice, the five marketing years) immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

(14) (B) "Reserve supply level" of tobacco shall be the normal supply plus 5 per centum thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty.

(15) "Tobacco" means each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 of the Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, and 14;
Fire-cured and dark air-cured tobacco, comprising types 21, 22, 23, 24, 35, 36, and 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, and 55;
Cigar-filler tobacco, comprising type 41.

The provisions of this title shall apply to each of such kinds of tobacco severally.

(16) (B) "Total supply" of tobacco for any marketing year shall be the carry-over at the beginning of such marketing year plus the estimated production thereof in the United States during the calendar year in which such marketing year begins, except that the estimated production of

type 46 tobacco during the marketing year with respect to which the determination is being made shall be used in lieu of the estimated production of such type during the calendar year in which such marketing year begins in determining the total supply of cigar-filler and cigar-binder tobacco.

(c) The latest available statistics of the Federal Government shall be used by the Secretary in making the determinations required to be made by the Secretary under this Act.

Consumer Safeguards.

Sec. 304. The powers conferred under this Act shall not be used to discourage the production of supplies of foods and fibers sufficient to maintain normal domestic human consumption as determined by the Secretary from the records of domestic human consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodity that were forced into domestic consumption by decline in exports during such period, current trends in domestic consumption and exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities. In carrying out the purposes of this Act it shall be the duty of the Secretary to give due regard to the maintenance of a continuous and stable supply of agricultural commodities from domestic production adequate to meet consumer demand at prices fair to both producers and consumers.

Subtitle B—Marketing Quotas.

Part I.—Marketing Quotas—Tobacco.

Legislative Finding.

Sec. 311 (a) The marketing of tobacco constitutes one of the great basic industries of the United States with ramifying activities which directly affect interstate and foreign commerce at every point, and stable conditions therein are necessary to the general welfare. Tobacco produced for

market is sold on a Nation-wide market and, with its products, moves almost wholly in interstate and foreign commerce from the producer to the ultimate consumer. The farmers producing such commodity are subject in their operations to uncontrollable natural causes, are widely scattered throughout the Nation, in many cases such farmers carry on their farming operations on borrowed money or leased lands, and are not so situated as to be able to organize effectively, as can labor and industry through unions and corporations enjoying Government protection and sanction. For these reasons, among others, the farmers are unable without Federal assistance to control effectively the orderly marketing of such commodity with the result that abnormally excessive supplies thereof are produced and dumped indiscriminately on the Nation-wide market.

(b) The disorderly marketing of such abnormally excessive supplies affects, burdens, and obstructs interstate and foreign commerce by (1) materially affecting the volume of such commodity marketed therein, (2) disrupting the orderly marketing of such commodity therein, (3) reducing the price for such commodity with consequent injury and destruction of interstate and foreign commerce in such commodity, and (4) causing a disparity between the prices for such commodity in interstate and foreign commerce and industrial products therein, with a consequent diminution of the volume of interstate and foreign commerce in industrial products.

(c) Whenever an abnormally excessive supply of tobacco exists, the marketing of such commodity by the producers thereof directly and substantially affects interstate and foreign commerce in such commodity and its products, and the operation of the provisions of this Part becomes necessary and appropriate in order to promote, foster, and maintain an orderly flow of such supply in interstate and foreign commerce.

National Marketing Quota.

Sec. 312. (a) Whenever, on the 15th day of November of any calendar year, the Secretary finds that the total supply

of tobacco as of the beginning of the marketing year then current exceeds the reserve supply level therefor, the Secretary shall proclaim the amount of such total supply, and, beginning on the first day of the marketing year next following and continuing throughout such year, a national marketing quota shall be in effect for the tobacco marketed during such marketing year. The Secretary shall also determine and specify in such proclamation the amount of the national marketing quota in terms of the total quantity of tobacco which may be marketed, which will make available during such marketing year a supply of tobacco equal to the reserve supply level. Such proclamation shall be made not later than the 1st day of December in such year.

(b) Whenever in the case of burley tobacco, and fire-cured and dark air-cured tobacco, respectively, the total supply proclaimed pursuant to the provisions of subsection (a) of this section exceeds the reserve supply level by more than 5 per centum and a national marketing quota is not in effect for such tobacco during the marketing year then current, a national marketing quota shall also be in effect for such tobacco marketed during the period from the date of such proclamation to the end of such current marketing year, and the Secretary shall determine and shall specify in such proclamation the amount of such national marketing quota in terms of the total quantity which may be marketed, which will make available during such current marketing year a supply of tobacco equal to the reserve supply level. The provisions of this subsection shall not be effective prior to the beginning of the marketing year beginning in the calendar year 1938.

(c) Within thirty days after the date of the issuance of the proclamation specified in subsection (a) of this section, the Secretary shall conduct a referendum of farmers who were engaged in production of the crop of tobacco harvested prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quota. If in the case of burley tobacco, or fire-cured and dark air-cured tobacco, respectively, farmers would be subject to a national quota for the next succeeding marketing year pur-

suant to the provisions of subsection (a) of this section, and also to a national marketing quota for the current marketing year pursuant to the provisions of subsection (b) of this section, the referendum shall provide for voting with respect to each such quota. If more than one-third of the farmers voting in the referendum oppose such quota, the Secretary shall, prior to the 1st day of January, proclaim the result of the referendum and such quota shall not be effective thereafter.

(d) In connection with the determination and proclamation of any marketing quota for the 1938-1939 marketing year, the determination by the Secretary pursuant to subsection (a) of this section shall be made and proclaimed within fifteen days following the date of the enactment of this Act, and the proclamation of the Secretary pursuant to subsection (c) of this section shall be made within forty-five days following the date of the enactment of this Act.

(e) Marketing quotas shall not be in effect with respect to cigar-filler tobacco comprising type 41 during the marketing year beginning in 1938 or the marketing year beginning in 1939.

(f) Notwithstanding any other provisions of this Act, the Secretary shall, within fifteen days after the enactment of this subsection (f), proclaim the amount of the total supply of burley tobacco for the marketing year therefor beginning October 1, 1937, and a national marketing quota shall be in effect for burley tobacco marketed during the marketing year for such tobacco beginning October 1, 1938. The Secretary shall also determine and specify in such proclamation the amount of such national marketing quota in terms of the total quantity of such tobacco which may be marketed, which will make available during the marketing year beginning October 1, 1938, a supply of such tobacco equal to the reserve supply level. The referendum with respect to such quota, pursuant to subsection (c) of this section, shall be held and the results thereof proclaimed within forty-five days after the enactment of this subsection (f).

Sec. 313. (a) The national marketing quota for tobacco established pursuant to the provisions of section 312, less

the amount to be allotted under subsection (c) of this section, shall be apportioned by the Secretary among the several States on the basis of the total production of tobacco in each State during the five calendar years immediately preceding the calendar year in which the quota is proclaimed (plus, in applicable years, the normal production on the acreage diverted under previous agricultural adjustment and conservation programs), with such adjustments as are determined to be necessary to make correction for abnormal conditions of production, for small farms, and for trends in production, giving due consideration to seed bed and other plant diseases during such five-year period: Provided, however, That to prevent in any case too sharp and sudden reduction in acreage of tobacco production in any State, the marketing quota for flue-cured tobacco for any State for any marketing year shall not be reduced to a point less than 75 per centum of the production of flue-cured tobacco in such State for the year 1937.

(b) The Secretary shall provide, through the local committees, for the allotment of the marketing quota for any State among the farms on which tobacco is produced, on the basis of the following: Past marketing of tobacco, making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: Provided, That, except for farms on which for the first time in five years tobacco is produced to be marketed in the marketing year for which the quota is effective, the marketing quota for any farm shall not be less than the smaller of either (1) three thousand two hundred pounds, in the case of flue-cured tobacco, and two thousand four hundred pounds, in the case of other kinds of tobacco, or (2) the average tobacco production for the farm during the preceding three years, plus the average normal production of any tobacco acreage diverted under agricultural adjustment and conservation programs during such preceding three years.

(c) The Secretary shall provide, through local committees, for the allotment of not in excess of 5 per centum of

the national marketing quota (1) to farms in any State whether it has a State quota or not on which for the first time in five years tobacco is produced to be marketed in the year for which the quota is effective and (2) for further increase of allotments to small farms pursuant to the proviso in subsection (b) of this section on the basis of the following: Land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: Provided, That farm marketing quotas established pursuant to this subsection for farms on which tobacco is produced for the first time in five years shall not exceed 75 per centum of the farm marketing quotas established pursuant to subsection (b) of this section for farms which are similar with respect to the following: Land, labor, and equipment available for the production of tobacco, crop-rotation practices, and the soil and other physical factors affecting the production of tobacco.

(d) Farm marketing quotas may be transferred only in such manner and subject to such conditions as the Secretary may prescribe by regulations.

(e) In case of flue-cured tobacco, the national quota for 1938 is increased by a number of pounds required to provide for each State in addition to the State poundage allotment a poundage not in excess of 4 per centum of the allotment which shall be apportioned in amounts which the Secretary determines to be fair and reasonable to farms in the State receiving allotments under the Agricultural Adjustment Act of 1938 which the Secretary determines are inadequate in view of past production of tobacco, and for each year by a number of pounds sufficient to assure that any State receiving a State poundage allotment of flue-cured tobacco shall receive a minimum State poundage allotment of flue-cured tobacco equal to the average national yield for the preceding five years of five hundred acres of such tobacco.

(f) In the case of fire-cured and dark air-cured and burley tobacco, the national quota for 1938 is increased by a number of pounds required to provide for each State in addition

to the State poundage allotment a poundage not in excess of 2 per centum of the allotment which shall be apportioned in amounts which the Secretary determines to be fair and reasonable to farms in the State receiving allotments under this section which the Secretary determines are inadequate in view of past production of tobacco.

Penalties.

Sec. 314. The marketing of any tobacco in excess of the marketing quota for the farm on which the tobacco is produced, except the marketing of any such tobacco for nicotine or other byproduct uses, shall be subject to a penalty of 50 per centum of the market price of such tobacco on the date of such marketing, or, if the following rates are higher, 3 cents per pound in the case of flue-cured, Maryland, or burley, and 2 cents per pound in the case of all other kinds of tobacco. Such penalty shall be paid by the person who acquires such tobacco from the producer but an amount equivalent to the penalty may be deducted by the buyer from the price paid to the producer in case such tobacco is marketed by sale; or, if the tobacco is marketed by the producer through a warehouseman or other agent, such penalty shall be paid by such warehouseman or agent who may deduct an amount equivalent to the penalty from the price paid to the producer: Provided, That in case any tobacco is marketed directly to any person outside the United States the penalty shall be paid and remitted by the producer.

Subtitle C—Administrative Provisions.

Part I.—Publication and Review of Quotas.

Application of Part.

Sec. 361. This Part shall apply to the publication and review of farm marketing quotas established for tobacco, corn, wheat, cotton and rice, established under subtitle B.

Publication and Notice of Quota.

Sec. 362. All acreage allotments, and the farm marketing quotas established for farms in a county or other local administrative area shall, in accordance with regulations

of the Secretary, be made and kept freely available for public inspection in such county or other local administrative area. An additional copy of this information shall be kept available in the office of the county agricultural extension agent or with the chairman of the local committee. Notice of the farm marketing quota of his farm shall be mailed to the farmer.

Review by Review Committee.

Sec. 363. Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in Section 362, have such quota reviewed by a local review committee composed of three farmers appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotment, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final.

Review Committee.

Sec. 364. The members of the review committee shall receive as compensation for their services the same per diem as that received by the members of the committee utilized for the purposes of the Soil Conservation and Domestic Allotment Act, as amended. The members of the review committee shall not be entitled to receive compensation for more than thirty days in any one year.

Institution of Proceedings.

Sec. 365. If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail, file a bill in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall

be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact.

Court Review.

Sec. 366. The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be conclusive. At the earliest convenient time, the court, in term time or vacation, shall hear and determine the case upon the original record of the hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court determines that such determination or modified determination is not in accordance with law, the court shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires.

Stay of Proceedings and Exclusive Jurisdiction.

Sec. 367. The commencement of judicial proceedings under this Part shall not, unless specifically ordered by the court, operate as a stay of the review committee's determination. Notwithstanding any other provision of law, the jurisdiction conferred by this Part to review the legal validity of a determination made by a review committee pursuant to this Part shall be exclusive. No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under this Part.

No Effect on Other Quotas.

Sec. 368. Notwithstanding any increase of any farm marketing quota for any farm as a result of review of the determination thereof under this Part, the marketing quotas for other farms shall not be affected.

Part II.—Adjustment of Quotas and Enforcement.

General Adjustments of Quotas.

Sec. 371. (a) If at any time the Secretary has reason to believe that in the case of corn, wheat, cotton, rice, or tobacco the operation of farm marketing quotas in effect will cause the amount of such commodity which is free of marketing restrictions to be less than the normal supply for the marketing year for the commodity then current, he shall cause an immediate investigation to be made with respect thereto. In the course of such investigation due notice and opportunity for hearing shall be given to interested persons. If upon the basis of such investigation the Secretary finds the existence of such fact, he shall proclaim the same forthwith. He shall also in such proclamation specify such increase in, or termination of, existing quotas as he finds, on the basis of such investigation, is necessary to make the amount of such commodity which is free of marketing restrictions equal the normal supply.

(b) If the Secretary has reason to believe that, because of a national emergency or because of a material increase

in export demand, any national marketing quota for c
wheat, cotton, rice, or tobacco should be increased or te
nated, he shall cause an immediate investigation to be m
to determine whether the increase or termination is ne
sary in order to effectuate the declared policy of this
or to meet such emergency or increase in export dem
If, on the basis of such investigation, the Secretary fi
that such increase or termination is necessary, he shall
mediately proclaim such finding (and if he finds an incre
is necessary, the amount of the increase found by him to
necessary) and thereupon such quota shall be increased,
shall terminate, as the case may be.

(c) In case any national marketing quota for any c
modity is increased under this section, each farm market
quota for the commodity shall be increased in the same ra

Payment and Collection of Penalties.

Sec. 372. (a) The penalty with respect to the marketi
by sale, of wheat, cotton, or rice, if the sale is to any per
within the United States, shall be collected by the buyer.

(b) All penalties provided for in Subtitle B shall be c
lected and paid in such manner, at such times, and un
such conditions as the Secretary may by regulations p
scribe. Such penalties shall be remitted to the Secretary
the person liable for the penalty, except that if any other p
son is liable for the collection of the penalty, such other p
son shall remit the penalty. The amount of such penalt
shall be covered into the general fund of the Treasury
the United States.

(c) Whenever, pursuant to a claim filed with the Sec
tary within one year after payment to him of any penal
collected from any person pursuant to this Act, the Sec
tary finds that such penalty was erroneously, illegally,
wrongfully collected, the Secretary shall certify to the S
retary of the Treasury for payment to the claimant, in a
cordance with regulations prescribed by the Secretary of t
Treasury, such amount as the Secretary finds the claima
is entitled to receive as a refund of such penalty.

The Secretary is authorized to prescribe regulations governing the filing of such claims and the determination of such refunds.

(d) No penalty shall be collected under this Act with respect to the marketing of any agricultural commodity grown for experimental purposes only by any publicly owned agricultural experiment station.

Reports and Records.

Sec. 373. (a) This subsection shall apply to warehousemen, processors, and common carriers of corn, wheat, cotton, rice, or tobacco, and all ginners of cotton, all persons engaged in the business of purchasing corn, wheat, cotton, rice, or tobacco from producers, and all persons engaged in the business of redrying, prizing, or stemming tobacco for producers. Any such person shall, from time to time on request of the Secretary, report to the Secretary such information and keep such records as the Secretary finds to be necessary to enable him to carry out the provisions of this title. Such information shall be reported and such records shall be kept in accordance with forms which the Secretary shall prescribe. For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, the Secretary is hereby authorized to examine such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as he has reason to believe are relevant and are within the control of such person. Any such person failing to make any report or keep any record as required by this subsection or making any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500.

(b) Farmers engaged in the production of corn, wheat, cotton, rice, or tobacco for market shall furnish such proof of their acreage, yield, storage, and marketing of the commodity in the form of records, marketing cards, reports, storage under seal, or otherwise as the Secretary may prescribe as necessary for the administration of this title.

(c) All data reported to or acquired by the Secretary pursuant to this section shall be kept confidential by all officers and employees of the Department, and only such data so reported or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under this title.

Regulation.

Sec. 375. (a) The Secretary shall provide by regulations for the identification, wherever necessary, of corn, wheat, cotton, rice, or tobacco so as to afford aid in discovering and identifying such amounts of the commodities as are subject to and such amounts thereof as are not subject to marketing restrictions in effect under this title.

(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this title.

Court Jurisdiction.

Sec. 376. The several district courts of the United States are hereby vested with jurisdiction specifically to enforce the provisions of this title. If and when the Secretary shall so request, it shall be the duty of the several district attorneys in their respective districts, under the direction of the Attorney General, to institute proceedings to collect the penalties provided in this title. The remedies and penalties provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law.

Utilization of Local Agencies.

Sec. 388. (a) The provisions of section 8 (b) and section 11 of the Soil Conservation and Domestic Allotment Act, as amended, relating to the utilization of State, county, local committees, the extension service, and other approved agencies, and to recognition and encouragement of cooperative associations, shall apply in the administration of this Act; and the Secretary shall, for such purposes, utilize the same local, county, and State committees as are utilized under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended. The local administrative areas designated under section 8 (b) of the Soil

Conservation and Domestic Allotment Act, as amended, for the administration of programs under that Act, and the local administrative areas designated for the administration of this Act shall be the same.

Personnel.

Sec. 389. The Secretary is authorized and directed to provide for the execution by the Agricultural Adjustment Administration of such of the powers conferred upon him by this Act, as he deems may be appropriately exercised by such Administration; and for such purposes the provisions of law applicable to appointment and compensation of persons employed by the Agricultural Adjustment Administration shall apply.

Separability.

Sec. 390. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances, and the provisions of the Soil Conservation and Domestic Allotment Act, as amended, shall not be affected thereby. Without limiting the generality of the foregoing, if any provision of this Act should be held not to be within the power of the Congress to regulate interstate and foreign commerce, such provision shall not be held invalid if it is within the power of the Congress to provide for the general welfare or any other power of the Congress. If any provision of this Act for marketing quotas with respect to any commodity should be held invalid, no provision of this Act for marketing quotas with respect to any other commodity shall be affected thereby. If the application of any provision for a referendum should be held invalid, the application of other provisions shall not be affected thereby. If by reason of any provision for a referendum the application of any such other provision to any person or circumstance is held invalid, the application of such other provision to other persons or circumstances shall not be affected thereby.

(c) The final decree of the Statutory District Court for the Middle District of Georgia, a review of which is sought

by the appeal herein, was signed October 5, 1938, and entered October 7, 1938, and the application for appeal is presented contemporaneously with the presentation of this statement, to wit, on the 18th day of October, 1938.

(d) The nature of the case and of the rulings of the said Statutory District Court, which are deemed to bring the case within the jurisdictional provisions relied on, are as follows:

Plaintiffs-appellants herein, by their bill of complaint, seek interlocutory and permanent injunctions suspending or restraining the enforcement, operation and execution of, and setting aside in whole or in part, the provisions of the Act of Congress set forth in paragraph (b) above, upon the grounds that such Act and said parts thereof are repugnant to the Constitution of the United States. The said decree appealed from denies the interlocutory and permanent injunctions sought in said bill of complaint and dismisses the said bill of complaint.

(e) There is appended hereto a copy of the opinion delivered by the said Statutory Court upon the rendering of the decree sought to be reviewed, such opinion being the only opinion rendered in this case.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 8 of the said Act of Congress of August 24, 1937, U. S. C. A., Title 28, Section 380(a).

Respectfully submitted,

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EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA, VALDOSTA DIVISION.

IN EQUITY.

No. 97.

JAMES H. MULFORD *et al.*, *Plaintiffs*,

vs.

NAT SMITH *et al.*, *Original Defendants*, and UNITED STATES OF AMERICA, *Intervening Defendant*.

The plaintiffs, numerous producers of tobacco in Georgia and Florida, brought in a State court a bill *quia timet* against the defendants, the tobacco warehousemen doing business in Valdosta, Ga., to and through whom the plaintiffs intended to market their tobacco in the selling season of August, 1938, to enjoin the defendants from retaining and paying over to the United States as a penalty one-half of the purchase price of tobacco marketed in excess of the several quotas of the plaintiffs fixed under Sections 311, 312 and 314 of the Agricultural Adjustment Act of 1938. The cause was removed to this court as one arising under a law regulating commerce. 28 U. S. C. A. 41 (8). The bill was amended to seek a decree declaring unconstitutional and void the said sections of the Agricultural Adjustment Act as beyond the power of Congress, and as delegating legislative power to the Secretary of Agriculture, and especially as applied to the crop of 1938 because operating to take property without due process of law. The United States intervened to defend the Act. The case was submitted to a court of three judges upon a stipulation of the evidentiary facts.

Findings of Fact.

The facts as stipulated are true. The important conclusions are:

The plaintiffs have each marketed in August, 1938, tobacco produced by them in excess of quotas for this season fixed for their several farms pursuant to the Agricultural Adjustment Act and the Regulations made under it by the Secretary of Agriculture. No complaint is made of the fairness of the quotas if there was authority to make quotas. The penalties for the excess marketing have under order of the Court been paid into Court to await decision as to their disposition.

The tobacco of plaintiffs was sold to buyers for shipment to other States and to foreign countries. The manufacture of tobacco in Georgia is negligible. The Florida plaintiffs brought their tobacco into Georgia to market it at the warehouses, where sales are customarily made, as a sort of tobacco exchange.

The tobacco business as a whole is essentially a matter of interstate and foreign commerce. A number of States produce some tobacco, but the bulk of it is produced in the six States of Virginia, Kentucky, North Carolina, Georgia and Florida. It is consumed everywhere. It is manufactured extensively in Virginia and North Carolina and in many non-producing States. Over half of the tobacco produced is exported to foreign countries. It is sold by producers in market towns, for the most part in warehouses maintained for the purpose, during seasons of only a few weeks. The price is fixed by the buyers, mainly manufacturers and exporters, who are supposed to compete as purchasers. The demand is practically stable from year to year, but the supply of tobacco is very variable, depending not only on the acreage planted but also on uncontrollable factors of weather, pests and misfortune. Tobacco when further cured and packed away will keep indefinitely and is improved by aging; and manufacturers maintain large stocks of it. When the supply does not exceed the normal demand the manufacturers compete in buying and the price is relatively high. When the supply is excessive the buyers hold off, the price is greatly depressed, sometimes below the cost of production. Average prices in recent years have varied from twenty-seven cents per pound to as low as eight cents. The price variations are not local but countrywide.

Commerce in tobacco in the United States is very extensive and of public importance. Over 700,000 families are engaged in producing it and over 300,000 in producing the kind of tobacco quotas on which are here involved. Around a billion pounds are produced annually and the manufactured product exceeds in value a billion dollars. Before passing the Act in question Congress made very thorough and deliberate investigation of the business, holding many hearings about it. The Act was not hastily passed but represents the considered and matured conclusion of the Legislature. As stated in Section 311 it was found as a fact that "the marketing of tobacco constitutes one of the great basic industries of the United States with ramifying activities which directly affect interstate and foreign commerce at every point, and stable conditions therein are necessary to the general welfare. Tobacco produced for market is sold on a nationwide market and with its products moves almost wholly in interstate and foreign commerce from the producer to the ultimate consumer * * *. The disorderly marketing of such abnormally excessive supplies affects, burdens and obstructs interstate and foreign commerce" in ways stated. "Whenever an abnormally excessive supply of tobacco exists * * * the operation of the provisions of this Part becomes necessary in order to promote, foster and maintain an orderly flow of such supply in interstate and foreign commerce". If a court may question such legislative fact findings, in this case the legislature has found truly.

An abnormally excessive supply of tobacco was in prospect when the Act was passed on Feby. 18, 1938. The Secretary of Agriculture so found under its provisions. A national quota was fixed and proclaimed on that very date, and on March 16 submitted in a referendum to the producers, who approved it by a vote of about six to one, though only 62% of Georgia producers voted for it. How the plaintiffs voted does not appear. The State quotas at once followed by mathematical computation. The farm quotas were not definitely fixed till June. Some adjustments were made in these as late as August, but they were enlargements and did not prejudice any plaintiff. The quotas were fair and according to the Act and Regulations. When the Act was

passed the plaintiffs had planted their seeds in beds, and the plants were probably up and growing. When the referendum was held in March the land had been prepared and fertilized, though most plants were not transplanted till about April 1. When the farm quotas were definitely made in June the crop had been cultivated and was approaching maturity. When the marketing was done in August each plaintiff knew what his quota was.

Conclusions of Law.

1. The provisions of Sects. 312, 313 and 314 of the Agricultural Act of 1938 are regulations of interstate and foreign commerce within the power given Congress by the Constitution.

2. The provisions as to fixing farm quotas in Sect. 313 (b) are not so indefinite as to deny due process of law or to vest unconstitutionally legislative power in the Secretary of Agriculture.

3. The provisions of Sect. 312 (d) for making quotas for the 1938 crop while entailing some hardship on growers who had already planted their crops, do not operate to deprive them of property without due process of law.

SAMUEL H. SIBLEY,
United States Circuit Judge.
C. B. KENNAMER,
United States District Judge.
BASCOM S. DEAVER,
United States District Judge.

Filed Oct. 7, 1938. George F. White, Clerk.

THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA, VAL-
DOSTA DIVISION.

IN EQUITY.

No. 97.

JAMES H. MULFORD, *et al., Plaintiffs,*

vs.

SMITH *et al., Original Defendants,* and UNITED STATES OF AMERICA, *Intervening Defendant.*

his cause came on for final hearing upon an agreed
ement of facts before a Court composed of Honorable
uel H. Sibley, United States Circuit Judge, Honorable
com S. Deaver and Honorable Charles B. Kennamer,
rict Judges, and was argued by counsel, and decision
rved. The Court being now fully advised in pursuance
findings of Fact and Conclusions of Law filed herewith,
considered and decreed by the Court:

That Sections 312, 313 and 314 of the Agricultural Ad-
ment Act of 1938, exhibited in the petition, are constitu-
al and valid as against the attacks made by the plaintiffs
eon.

That the application of the Act to the marketing sea-
of 1938 is not unconstitutional, but the quotas fixed
eunder for the marketing of plaintiffs' tobacco are valid
binding, and marketing by them of tobacco in excess
ch quotas may validly be penalized according to the Act.

The injunction prayed for is denied, and the restrain-
rder heretofore granted is dissolved. The funds in the
ls of the Clerk are to be returned to the parties who
them in, for disposition according to law. Should any
ites arise touching said fund, jurisdiction is reserved
ear and determine it.

4. The bill is dismissed, and costs are adjudged against the plaintiffs in favor of the defendants, to be taxed by the Clerk.

This October 5, 1938.

SAMUEL H. SIBLEY,
United States Circuit Judge.
C. B. KENNAMER,
United States District Judge.
____ ____,
United States District Judge.

Filed Oct. 7, 1938. George F. White, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA, VALDOSTA DIVISION.

IN EQUITY.

No. 97.

JAMES H. MULFORD *et al., Plaintiffs,*

vs.

NAT SMITH *et al., Original Defendants, and* UNITED STATES OF AMERICA, *Intervening Defendant.*

SIBLEY, *Circuit Judge:*

Some of the reasons supporting the foregoing Conclusions of Law may profitably be stated.

It is mainly urged for plaintiffs that the part of the Act in controversy is not a regulation of interstate and foreign commerce but is a regulation of all sales of tobacco by producers whether for export from the State or for manufacture and consumption within the State, and whether large or small; and that the real purpose and effect of it is to regulate and restrict the production of tobacco, which is a local activity. We may concede that agriculture, mining, manufacture and the like are in themselves local activities the regulation of which generally belongs to the States and not to Congress. So are sales made within the State

ntended at the time to result in removing the goods
the State. But it may not be maintained that such
sically local matters do not under some circumstances
ne so interwoven with interstate and foreign commerce
render it necessary and proper for Congress to effect
ntrol them in order to regulate the interstate and for-
commerce which springs from them. The power of
ress to regulate such commerce is paramount and is
broad. If regulation of any kind is needed, the Con-
and not the State must furnish it; and it may be of
kind not prohibited by other constitutional provisions.
ate prior to the Union would so have regulated by vir-
of its general police power. After the Union, this
re of the police power vests in the Congress. Within
here, the power of Congress is in its nature a police
r to be exerted for the public good and in any way, not
ibited, which Congress deems calculated to achieve the
ed regulatory effect. This may involve, as above
d, the affecting or controlling what would usually per-
to the State police power. This intrastate rates may
ntrolled by Congress when so involved with interstate
nerce as to make it necessary. Possession of intoxi-
g liquor under prohibition was controlled by Congress
gh its constitutional power extended only to the manu-
re, transportation and sale thereof. Very extensive
lation of the production of distilled liquors has always
allowed to secure payment of the federal taxes on the
rs, though such production would otherwise be only
tate concern. But the law in controversy does not di-
y regulate the production of tobacco. It does not penal-
r forbid the production of any amount the grower
es. He may do what he likes with it except to market
Since most tobacco is grown only to be sold, the inabil-
sell the excess of a quota except at a loss at least of all
t would tend to and probably would result in the non-
uction of the excess so far as the grower can prevent
But the Act directly deals only with the marketing, and
with the planting or production of tobacco.
nce marketing is an act of commerce, like transporta-
if marketing in interstate and foreign commerce alone

had been regulated there would be no fair doubt of the power of Congress generally to regulate. The trouble arises from the inclusion of all sale of tobacco by producers. Congress rests that inclusion on its right to regulate not particular sales as such, but the commerce in tobacco as a great whole, because it is overwhelmingly a matter of interstate and foreign traffic, and so unified in fact as that it must be dealt with generally and on a nation-wide scale. The price to producers, the stability of which is asserted by Congress to be a main concern both because the support of hundreds of thousands of persons depends on it, and because it in turn controls the amount of tobacco which will be grown and if too low may destroy the industry altogether, is a countrywide matter. No State acting alone could wisely or effectively regulate the situation. Conflict and reprisals would almost certainly follow State effort. In Georgia all tobacco, except a negligible amount, is sold for export from the State, and this is predominantly true in all the States which produce tobacco. The commerce in it is in fact overwhelmingly interstate and foreign. The stable supply to meet the stable demand and to result in a stable price which Congress seeks to achieve can in its judgment practically be reached only by a countrywide regulation controlling the entire market. Courts may not overrule the considered judgment of Congress on the point, where the conclusion is not clearly irrational and arbitrary. They must enforce the law without questioning its wisdom or effectiveness. Should Congress (except in a case of clear usurpation), seek unjustifiably to control matters which ought to remain with the States the issue becomes so far political that solution might better be had in the elections as of a public question between the States and the Union than in the courts at the instance of private litigants.

The Act is not a price-fixing one. The price is still fixed by the will of buyer and seller, and more remotely by the circumstances that normally affect prices. It seeks merely to stabilize one of those circumstances, to wit, the available marketable supply for the year. Protective tariffs affect prices similarly. It does not take the property of any producer. It affects the value of his excess, if intentionally

intentionally he makes more tobacco than his quota, e has to hold it for another quota year, or else use some other way. In so far as it takes his *liberty* of g what is his own for what he can obtain for it, or ectly affects his *liberty* to plant what he pleases on wn land, the taking is not without due process of law s the ordinary restraint of liberty which accompanies exercise of police power for the public good. One be prohibited by competent authority from raising or g tobacco if by so doing he injures others. *Sec Utere t alienum non laedas*, a nounless maxim, qualifies both roperty and the liberties of everyone.

is particular Act does not fail for vagueness in the ards for fixing quotas, nor leave anything to the Sec- y so as to make him legislator. The language of Sect.) refers to farm quotas, and in speaking of "past mar- g of tobacco" means the marketing from each several and so in reference to considering "land, labor and ment available for production of tobacco" reference is to each farm. These are the things that one would ally consider in fixing fair quotas for individual farms; hey furnish a sufficient legislative guide, and they were factorily applied to these plaintiffs.

e application of a quota in 1938 after crop prepara- had begun may entail some hardship and loss but does eprive of property without due process of law. When ct was passed in February, preparations had not pro- d far. Even in March when the referendum made it n there would be a quota it was not too late to plant of the tobacco land in other crops, at a loss only of of the young plants. The Act does not penalize one aving prepared too much land or having started too young plants, but only for selling too much tobacco as afterward. Had the quotas been fixed in December, reafter they will be, many producers would have pro- an excess anyhow, the season having been unusually able. That chance always must exist. If the conduct penalized has not happened and may be avoided when nal law is passed there is no constitutional transgres- lthough some preparation may have been made to do

it. Witness the fate of liquor stocks when laws pr
their sales were passed. The excess tobacco, it is
would spoil if kept unless further treated, and p
had no facilities for treating it. But all that is sold
treated by the purchasers. The growers, foresee
cesses, could have arranged to have their unsalable
processed, either by shipping it elsewhere or by con
a warehouse into a processing plant. At any rate it
their burden.

The penalties incurred by wilful sales this year of e
tobacco must be paid.

Filed Oct. 7, 1938. George F. White, Clerk.

IN THE DISTRICT COURT OF THE UNITED STA
FOR THE MIDDLE DISTRICT OF GEORGIA, V
DOSTA DIVISION.

IN EQUITY.

No. 97.

JAMES H. MULFORD *et al., Plaintiffs,*

vs.

NAT SMITH *et al., Original Defendants,* and UNITED STA
OF AMERICA, *Intervening Defendants.*

On the Bill of Complaint and the Stipulation of Fa
made by the Complainants and the Defendants, I believe
decree I am signing is proper.

I concur in the results reached by Judge Sibley, but
entirely in the reasoning or opinion.

C. B. KENNAMER,
United States District Judge.

Filed Oct. 21, 1938. W. E. Perry, Deputy Clerk.

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Judge.

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FEB 15 1939.
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 595.

JAMES H. MULFORD ET AL., APPELLANTS,

VS.

NAT SMITH ET AL., ORIGINAL DEFENDANTS, AND UNITED STATES OF AMERICA, INTERVENING DEFENDANT, APPELLEES.

BRIEF ON BEHALF OF APPELLANTS.

A. J. LITTLE,
C. A. AVERITT,
J. L. BLACKWELL,
L. E. HEATH,
Counsel for Appellants.

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Supreme Court of the United States

OCTOBER TERM, 1938.

No. 505.

JAMES H. MULFORD ET AL., APPELLANTS,

VS.

AT SMITH ET AL., ORIGINAL DEFENDANTS, AND UNITED STATES OF AMERICA, INTERVENING DEFENDANT, APPELLEES.

BRIEF ON BEHALF OF APPELLANTS.

I.

STATEMENT AS TO JURISDICTION AND NATURE OF APPEAL.

This is an appeal from a final decree of the United tes District Court for the Middle District of Georgia, erein a specially organized statutory court, consisting Circuit Judge Samuel H. Sibley, District Judge C. B. inamer, and District Judge Bascom S. Deaver denied injunction and relief prayed for by complainants below pellants here) and dismissed their bill, Judge Deaver joining in the decree and opinion.

The final decree and opinion, including findings of fact and conclusions of law were signed October 5th, 1938, and entered of record October 7th, 1938 (R. 183 *et seq.*).

Probable jurisdiction of this court was noted in the appellants' statement as to jurisdiction, duly served and filed pursuant to rule twelve of this court.

The appeal is of right under Section 3 of the Act of Congress of August 24, 1937, U. S. C. A., Title 28, Section 380 (a).

II.

STATEMENT OF THE CASE.

(A)

Status of the Case.

Appellants are farmers, who raise what is commonly known as flue-cured tobacco on their respective farms in the vicinity of Valdosta, Lowndes County, Georgia, and who intended to market and did market their 1938 tobacco crop in auction tobacco warehouses operated by defendant warehousemen in said city (R. 44).

Appellants' bill of complaint, as amended, seeks interlocutory and permanent injunctions suspending or restraining the enforcement, operation and execution of, and setting aside in whole or in part, the provisions of an Act of Congress, known as the Agricultural Adjustment Act of 1938, approved February 16, 1938, Public No. 430, 75th Congress, 52 Stat. 31, as amended, U. S. C. A. Title 7, Section 1281, *et seq.*, on the ground that said Act and certain parts thereof are repugnant to the Constitution of the United States. (Original bill of complaint, R. 1 to 6, and amendment thereto R. 24 to 29). The parts of said act which are material to an understanding of the constitutional questions involved and which include Section 312 to Section 314 (omitting certain subsections dealing with types of tobacco other than flue-cured tobacco), are set

ut in the appendix hereto. This Act, in substance, pro-
ides, that the Secretary of Agriculture may under cer-
ain conditions proclaim a national marketing quota for
lue-cured tobacco each year, including the year 1938, in
hich event he shall provide for a referendum of tobacco-
oducing farmers; that he shall then apportion the na-
ional quota among the several tobacco-producing states,
nd then through committees allot a quota to each farm.
penalty of 50 per cent of the sales price is assessed
gainst the marketing of any tobacco in excess of the
arm marketing quota, to be paid by the person acquiring
he tobacco from the producer, except that, if marketed
hrough a warehouse, the penalty is to be paid by the
arehouseman, with the further provision that, in either
ase, the equivalent of the penalty may be deducted
om the price paid the producer. The penalties are di-
ected to be remitted to the Secretary of Agriculture and
y him paid into the Treasury of the United States.

A condensed statement of the grounds on which the
onstitutionality of said Act is challenged in the bill and
mendment thereto is as follows:

(1) It is repugnant to the Tenth Amendment to the
onstitution of the United States, in that it legislates on
subject and in relation to a power not delegated to
he United States but reserved to the states; it is an
mpermissible attempt to regulate and control the growth,
oduction and sale of tobacco within a state; it is a statu-
ry plan to regulate and control the production and mar-
eting by producers of all tobacco produced within the
veral states, which are matters beyond the powers dele-
ted to the Federal Government, in invasion of the pow-
s reserved to the States (R. 5).

(2) The provisions of Subsection (b) of Section 313
the Act fixing the bases or standards by which farm
otas are established are so vague, uncertain and indefi-
te as unconstitutionally to vest in the Secretary of Agri-

culture legislative powers in violation of Article I, Section 1, of the Constitution of the United States, and furnish no protection to producers of tobacco against the unreasonable, arbitrary and capricious action on the part of the Secretary of Agriculture in the establishment of farm marketing quotas, thereby denying due process of law to producers in violation of the Fifth Amendment to the Constitution of the United States. See amendment to bill of complaint (R. 25 to 27).

(3) The Act was unconstitutionally applied to the 1938 tobacco crop of appellants for the reason that the establishment of the marketing quotas, subsequent to the planting, cultivation and gathering of the 1938 crop, during which time appellants had no means of ascertaining even the approximate number of pounds each might produce and sell free of penalty, rendered it impossible for them to take into consideration at the time of planting and cultivation possible restrictions on marketing and thereby avoid the labor and expense of producing tobacco in excess of marketing quotas, thus depriving appellants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States. See amendment to bill of complaint (R. 27 to 29).

The defendant warehousemen, by petition, removed the case from the state court to the District Court of the United States for the Middle District of Georgia, on the ground that there existed a controversy between the plaintiffs and defendants, the correct decision of which depends upon the construction of the Constitution of the United States and the validity of said Act, and on the further ground that said Act regulates all marketing of tobacco as in and directly affecting interstate and foreign commerce (R. 12 *et seq.*).

The United States of America filed its petition for leave to intervene as party defendant, and by order of the district court was permitted to intervene (R. 16 *et seq.*). The temporary restraining order passed by the state court

was continued in force by order of the district court, and the equivalent of the penalties was ordered impounded in the registry of the court by the consent of all parties (R. 19 *et seq.*).

The United States of America, intervening defendant, filed its answer admitting substantially all the material allegations of fact in the bill of complaint as amended, but denying the conclusions of law therein (R. 30 *et seq.*).

The defendant warehousemen filed their answer to the bill of complaint and amendment thereto making similar admissions of the facts alleged, claiming that they occupied a position analogous to that of an innocent and involuntary stake holder, and praying for protection and other relief (R. 33 *et seq.*).

The case was tried on a stipulation of facts and evidence before a three judge statutory court, and a final decree entered October 7th, 1938, signed by two of the presiding judges, finding in favor of defendants and denying all the prayers of the bill as amended, and dismissing the bill at the cost of the complainants (R. 183 *et seq.*).

An appeal to this court was allowed (R. 191), and stay granted (R. 194).

(B)

The Material Facts of This Cause.

The Secretary of Agriculture (hereinafter referred to as the Secretary), pursuant to the provisions of the Agricultural Adjustment Act of 1938 (hereafter referred to as the Act), on February 18th, 1938, proclaimed national marketing quota for flue-cured tobacco in the amount of 705,000,000 pounds (R. 39, 40).

The Secretary conducted a referendum of flue-cured tobacco-producing farmers on March 12th, 1938, which resulted favorably to the national marketing quotas (R. 41).

The Secretary apportioned the national quota among the seven states producing flue-cured tobacco on July 22nd, 1938. This was only six days before the Georgia and Florida markets opened (R. 41).

The above apportionment was readjusted on August 13th, 1938, increasing the national quota to 748,079,000 pounds (R. 102).

The farm quotas were allotted immediately preceding the opening of the Georgia and Florida markets on July 28th, 1938 (R. 45).

The appellants' bill of complaint was filed July 27th, 1938 (R. 11), at which time each plaintiff had reached the conclusion from the best available information that he had produced and would offer for sale tobacco in excess of his farm quota (R. 45).

Practically all flue-cured tobacco is raised in six states including Georgia and Florida (R. 52). From two-thirds to three-quarters of this tobacco is shipped in interstate commerce to other states or foreign countries (R. 66). Virginia is the only state that manufactures more tobacco than it produces (R. 65). Only a small percentage of tobacco raised in Georgia and Florida is manufactured in these states (R. 65), although Georgia has several redrying plants in which the tobacco is processed before shipment (R. 63).

Approximately 750,000 families engage in the production and marketing of tobacco; around 300,000 of these engage in the marketing and producing of flue-cured tobacco (R. 5).

Approximately eighty-five per cent of all tobacco is marketed through tobacco auction warehouses. A few sales are made direct to dealers; some is marketed through co-operative associations (R. 56).

Auction tobacco warehouses such as were operated by defendants provided practically the only available means for the marketing of the 1938 crop of appellants (R. 2).

Before flue-cured tobacco can be stored so as to keep it in a satisfactory condition for sale at some future pe-

d, it is necessary that it be redried and packed in hogs-ds. Associations which do not own their own redry- plants can have the tobacco of their members dried rivate processing plants. After the tobacco has been ried and packed it can be stored for an indefinite pe- l. During the marketing season in 1938 there were such co-operative associations in Georgia or Florida 56).

The redrying of flue-cured tobacco by a buyer usu- takes place within a week after purchase from the ducer. Redrying plants are owned and operated by st of the dealers and manufacturers (R. 63).

In the redrying plant the tobacco is assorted and ded according to grade and run through a redrying hine in order that it may be preserved by removing tically all of the original moisture and adding thereto ontrolled amount, after which it is packed in hogs-ds for storage and kept from one to five yars before ufactured (R. 62, 63).

Had not the defendant warehousemen been enjoined n deducting the equivalent of the penalties assessed er the provisions of the Act and from remitting same he Secretary they would have been so deducted and itted, and none of defendant warehousemen would e been financially able to respond in damages in the t the Act should be declared unconstitutional, and in event appellants' damages would be irreparable (bill mplaint, Paragraph 15 (R. 4), and answer of interven- defendant, Paragraph 7 (R. 31), and answer of origi- defendants, Paragraph 15 (R. 35)).

The facilities of the railroads and other common car- of the United States, and particularly the carriers ating in the tobacco growing sections of the South- where the bulk of flue-cured tobacco is produced, been for many years past, were at the time of the age and approval of the Agricultural Adjustment Act 938, and now are more than ample to move such cco freely and without undue delay (R. 68).

Neither in the farming industry of the sections named nor in the operation of tobacco warehouses have there been labor disputes or any danger or hint of labor disputes to threaten the free flow of tobacco in interstate or foreign commerce (R. 56).

Studies have been made which indicate that usually as among producers the total cost per pound of producing flue-cured tobacco has varied from ten to twenty cents, dependent upon various contingencies. Stated generally, one-half of the price received by farmers for their tobacco in 1938 is less than the cost of producing tobacco (R. 46).

The marketing season for flue-cured tobacco in Georgia and Florida usually begins about August 1st and ends about September 1st, and this was true in 1938. Notice of the marketing quota for the farm of each of the plaintiffs was given shortly before the opening of the auction markets of defendants. Prior to that time each of plaintiffs had practically completed the planting, cultivating, harvesting, curing and grading of his tobacco. Prior to the service of such notice, no one of the plaintiffs knew, or had any way of knowing, the amount of his marketing quota. At the time of the approval of the Act by the President on February 16th, 1938, each of plaintiffs had gone to considerable expense and labor in planting his seedbeds and in caring for same, and each had prepared and purchased fertilizer for the fields in which the tobacco was to be transplanted from these beds, all of which had entailed considerable expense. The harvesting began during the month of June, 1938, and continued during the month of July, followed by the curing and grading of tobacco. The major portion of the crop in this section is usually gathered and ready for market by the first of August and this condition existed in 1938. The planting, cultivating, curing and grading of this tobacco require much labor, care and expense. All of this necessary work had been completed and expenses incurred before the farm quotas were allotted (R. 45, 46).

(Note: The stipulation of facts is lengthy. It in-
ides a history of the tobacco industry from the days of
e Jamestown Colony to the present, and also includes
ny statistics and statements which we think throw
light on the issues involved, and for that reason are
itted from this brief).

III.

ASSIGNMENT OF ERRORS.

Appellants insist on each and every assignment of
or set out in the assignment of errors (R. 192). These
ignments condensed are as follows:

The court erred in the following particulars:

(1) In holding that Sections 312, 313 and 314 of the
constitute a regulation of the marketing of tobacco
hin the power of Congress to regulate commerce with
ign countries and among the several states.

(2) In holding that the said sections of said Act
stitute a valid regulation of all marketing of tobacco
hin the power of Congress to regulate commerce.

(3) In holding that the provisions of Subsection (b)
ection 313 relating to the establishment of marketing
tas for tobacco farms are sufficiently certain in their
ns and do not unconstitutionally vest in the Secretary
slative power.

(4) In holding that the provisions of said subsection
not so vague and indefinite as to constitute a denial
ue process of law to appellants.

(5) In holding that said sections of said Act are valid
gainst the attacks made by plaintiffs-appellants.

(6) In holding that the provisions of Subsection (d)
ection 312 of said Act whereby farm marketing quotas
obacco were established for the 1938-1939 marketing
do not operate to deprive plaintiffs-appellants of
property without due process of law.

IV.

SUMMARY OF ARGUMENT OUTLINING POINTS RELIED ON.

POINT A (page 12).

Sections 312, 313 and 314 of the Agricultural Adjustment Act of 1938, as a part of a statutory plan outlined in the whole Act to regulate the production of major agricultural crops within the states, include provisions regulating and controlling the production and marketing by producers of all tobacco produced within the several states, which are matters beyond the powers delegated to Congress, in invasion of the powers reserved to the states under the Tenth Amendment to the Constitution of the United States.

(This point covers Paragraphs 1, 2 and 5 of the assignment of errors (R. 192).)

POINT B (page 20).

The provisions of Subsection (b) of Section 313 of said Act relating to the establishment of marketing quotas for tobacco farmers are so vague, uncertain and indefinite in their terms as unconstitutionally to vest in the Secretary of Agriculture legislative powers, and furnish no protection to producers of tobacco against the arbitrary action on the part of the Secretary of Agriculture in the establishment of farm marketing quotas, thereby constituting a denial of due process of law to producers.

(This is covered in the assignment of errors, Paragraphs 3, 4 and 5 (R. 192).)

POINT C (page 22).

Said Act was unconstitutionally applied to the 1938 tobacco crop of appellants for the reason that the establish-

ment of marketing quotas for the farms of appellants, subsequent to the planting, cultivation and gathering of their respective crops, during which time appellants did not know and had no means of knowing even the approximate number of pounds of tobacco each might raise free of penalty, rendered it impossible for them to take into consideration during said time possible restrictions on marketing and avoid the labor and expense of producing tobacco in excess of unannounced and undetermined marketing quotas, thereby depriving them of their property without due process of law.

(This point is covered in assignment of errors, Paragraphs 5 and 6 (R. 193).)

V.

ARGUMENT.

Point A.

SECTIONS 312, 313 AND 314 OF THE AGRICULTURAL ADJUSTMENT ACT OF 1938, AS A PART OF A STATUTORY PLAN OUTLINED IN THE WHOLE ACT TO REGULATE THE PRODUCTION OF MAJOR AGRICULTURAL CROPS WITHIN THE STATES, INCLUDE PROVISIONS REGULATING AND CONTROLLING THE PRODUCTION AND MARKETING BY PRODUCERS OF ALL TOBACCO PRODUCED WITHIN THE SEVERAL STATES WHICH ARE MATTERS BEYOND THE POWERS DELEGATED TO CONGRESS, IN INVASION OF THE POWERS RESERVED TO THE STATES UNDER THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

We thought that the principle of law stated above, that the regulation and control of agricultural production are beyond the powers delegated to Congress, had not been an open question with courts and attorneys since the decision in the case of *United States* v. *Butler et al.*, 297 U. S. 1, in which case the Act of Congress known as the Agricultural Adjustment Act of 1933 (approved May 12th, 1933, Ch. 25, 48 Stat. at L. 31) was declared unconstitutional. On page 68 of the report of the decision in that case, the court held, apart from other questions, that:

> "The act invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government. The tax, the appropriation of the funds raised, and the direction for the disbursement, are but parts of the plan. They are but means to an unconstitutional end.

"From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the tenth amendment was adopted. The same proposition, otherwise stated, is that powers not granted are prohibited. None to regulate agricultural production is given, and therefore legislation by Congress for that purpose is forbidden."

In the dissenting opinion by Mr. Justice Stone (Mr. Justice Brandeis and Mr. Justice Cardozo concurring), there is no dissent from this pronouncement. On the contrary the dissenting opinion impliedly concurs in this statement of the law. The majority opinion holds that the Agricultural Adjustment Act of 1933 was a plan to regulate and control agricultural production. The minority opinion holds, in substance, that an offer of compensation for acreage reduction, not enforced by legal compulsion, is not such coercion as to constitute control, but that coercion by threat of loss, not hope of gain, does constitute legal compulsion. The following excerpts from the dissenting opinion support the above conclusions:

"The tax is unlike the penalties which are held invalid in the *Child Labor Tax Case* (*Bailey* v. *Drexel Furniture Co.*), 259 U. S. 20, 66 L. Ed. 817, 42 S. Ct. 449, 21 A. L. R. 1432, in *Hill* v. *Wallace*, 259 U. S. 44, 66 L. Ed. 822, 42 S. Ct. 453, in *Linder* v. *United States*, 268 U. S. 5, 17, 68 L. Ed. 810, 823, 45 S. Ct. 446, 39 A. L. R. 229, and in *United States* v. *Constantine*, decided December 9, 1935 (296 U. S. 287, *ante*, 233, 56 S. Ct. 223), because they were themselves the instruments of regulation by virtue of their coercive effect on matters left to the control of the states.

"Although the farmer is placed under no legal compulsion to reduce acreage it is said that the mere offe of compensation for so doing is a species of econom coercion which operates with the same legal force nd effect as though the curtailment were made mandatory by Act of Congress.

"The suggestion of coercion finds no support in the record or in any data showing the actual operation of the Act. Threat of loss, not hope of gain, is the essence of economic coercion.

"It is significant that in the congressional hearings on the bill that become the Bankhead Act (April 21, 1934), 48 Stat. at L. 598, Ch. 157, as amended by Act of June 20, 1934, 48 Stat. at L. 1184, Ch. 687, U. S. C. A. Title 7, 725, which imposes a tax of 50 per cent on all cotton produced in excess of limits prescribed by the Secretary of Agriculture, there was abundant testimony that the restriction of cotton production attempted by the Agricultural Adjustment Act could not be secured without the coercive provisions of the Bankhead Act.

"The power to tax and spend is not without constitutional restraints. One restriction is that the purpose must be truly national. Another is that it may not be used to coerce action left to state control."

The point of difference between the majority and minority opinion is therefore not on the question of the constitutionality of control, but on whether or not the Act did control or regulate production.

The unconstitutionality of such regulation and control is reaffirmed by a decision from which there is no dissent in the case of *Rickert Rice Mills* v. *Fontenot*, 297 U. S. 110, rehearing denied, 297 U. S. 726.

The Kerr-Smith Tobacco Act (48 Stat. 1275, Ch. 866), in which control of tobacco production was sought to be effected by the levy of tax on the marketing of tobacco in excess of production allotment, was declared unconstitutional by the Sixth Circuit Court of Appeals in *Glenn* v. *Smith*, 91 F. (2d) 447. In that opinion it was said:

"While tobacco which is marketed in auction warehouses does in large percentage enter into interstate commerce, the purpose of this regulation was to establish prices by restriction of production."

Although this is a circuit court opinion, we cite it because a petition for writ of certiorari was denied by the Supreme Court, 301 U. S. 691.

In the congressional findings prefacing the three control acts above referred to, to-wit: The Agricultural Adjustment Act of 1933, which has been declared unconstitutional by this court, the Bankhead Act obviously condemned by both the majority and minority opinion in the *Butler Case, supra,* and the Kerr-Smith Tobacco Act the commerce clause was invoked just as it is in the Agricultural Adjustment Act of 1938.

The unconstitutionality of the Bankhead Act and the Kerr-Smith Act were generally recognized and these acts were repealed.

Quoting again from the case of *United States* v. *Butler, supra*:

> "Widespread similarity of local conditions cannot confer upon Congress powers reserved to the states by the Federal Constitution."

This court has also frequently held that an emergency creates in Congress no new powers although it may call for the exercise of powers already conferred. Nor can Congress regulate commerce for the general welfare.

> "The attainment by Congress of a prohibited end may not be accomplished under the pretext of the assertion of powers which are granted."
>
> *United States* v. *Butler, supra.*

Neither the production and sale nor the manufacture and sale of *any* product within a state is interstate or foreign commerce, and Congress has no power to regulate the same, and therefore, if an Act of Congress purporting to levy a tax or to regulate commerce shows on its face that its primary purpose is not to raise revenue or to regulate commerce but to regulate under the guise of taxation or under the guise of regulation of commerce, it is invalid

as an exercise of a granted power. Supporting this statement, we cite the following cases:

Kidd v. *Pearson*, 128 U. S. 1.
Hammer v. *Dagenhart*, 247 U. S. 251.
Bailey v. *Drexel Furniture Company*, 259 U. S. 20.
Lipke v. *Lederer*, 259 U. S. 557.
Linder v. *United States*, 268 U. S. 5.
United Mine Workers of the World v. *Coronado Co.*, 259 U. S. 344.
Heisler v. *Thomas Collier Co.*, 260 U. S. 246.
Oliver Mining Co. v. *Lord*, 262 U. S. 172, 178.
Champlin Refining Co. v. *Corporation Commission*, 286 U. S. 210, 235.
United States v. *E. C. Knight Co.*, 156 U. S. 1.
Coe v. *Erroll*, 116 U. S. 517.
Crescent Oil Co. v. *Mississippi*, 257 U. S. 129.
Carter v. *Carter Coal Company*, 298 U. S. 238.
Hill v. *Wallace*, 259 U. S. 44.
United States v. *Butler*, *supra*.

We fail to find any decision by this court wherein it has been held or intimated that the *quantity* of legitimate goods produced or manufactured by a purely intrastate industry is subject to regulation or control by Congress on the theory that regulation was necessary to prevent overproduction.

There is a clear distinction between the right to exercise governmental control over trade in legitimate articles of commerce and the right to exercise such control over commerce in things contraband and things the use of which may reasonably be conceived to be injurious to the public or in contravention of the policy of the state of their destination.

We recognize that some intrastate industries may be regulated and controlled under the commerce clause. For example, we find reasonable and nonconfiscatory regulation of agencies and instrumentalities *engaged in* or *directly affecting* interstate commerce as illustrated by the

stockyard, board of trade, warehouse and intrastate rate cases. Again we have regulation of intrastate industries where same is necessary to prevent threatened strikes that tend to *prevent* or *obstruct* the free flow of goods in commerce, as in the Labor Relation Board cases. And Congress may forbid or control the shipment in commerce of goods that may have a detrimental effect on the public health or morals, and also regulate the shipment of certain goods, trade in which has been forbidden by the laws of any state under its police powers. The control of agricultural production is not included in any of these categories. On the contrary, this court, in the exercise of a policy of "inclusion and exclusion," has *excluded* agricultural production from the matters within the power of Congress to control.

IS THE AGRICULTURAL ADJUSTMENT ACT OF 1938 A STATUTORY PLAN TO REGULATE OR CONTROL AGRICULTURAL PRODUCTION AND DOES IT EMBRACE A PLAN TO REGULATE AND CONTROL THE PRODUCTION OF TOBACCO? WE CONTEND THAT A STUDY OF THE PROVISIONS OF THE ACT DEMANDS AN AFFIRMATIVE ANSWER.

As is hereinbefore shown, by the provisions of the Act, the Secretary of Agriculture, under certain conditions, may proclaim a national marketing quota for each year. He is empowered, in the apportionment of this quota, to determine the number of pounds of tobacco, if any, that may be produced in each state; and, through committees, to determine the exact number of pounds, if any, that may be produced on each farm. Here we find the Secretary vested with power to designate who shall and who shall not produce tobacco, and to prorate production among the individual producers. He is provided by the Act with a so-called standard by which he is to be guided in allotting production to each farmer. This standard (Subsection (b) of 313 of the Act) authorizes him to determine farm quotas not only on the

basis of past production, but also on the basis of the soil; the land, labor and equipment available for the production of tobacco; crop-rotating practices, and on the basis of other factors entering into the operation of a farm, some of which are undefined in the Act.

In this connection we respectfully request the court to read the Secretary's interpretation of the above subsection of this Act, under the heading, "Procedure for Determination of Flue-cured Tobacco Marketing Quotas" (R. 128 to 138). We find here, among other regulations, that, under this procedure, the amount of the 1938 quota is to some extent made to depend on the number of harvested and diverted acres of cotton on the farm in 1937, on the number of acres of peanuts harvested and marketed in 1937, on the number of acres of commercial truck and vegetables on the farm of 1937. In other words, if the farmer does not practice crop rotation in accordance with the ideas of the Secretary his quota is reduced.

A full discussion of the Act and regulations of the Secretary will unduly lengthen this brief. Suffice it to say that it includes detailed specifications for the regulation of farming with the imposition of a confiscatory penalty for noncompliance. It provides a more detailed and drastic regulation than was attempted by either the Agricultural Adjustment Act of 1933, the Bankhead Act, or the Kerr-Smith Act hereinbefore briefly discussed. If those three Acts were unconstitutional, there can be no doubt as to the unconstitutionality of this Act.

In the opinion written for the statutory court by the distinguished circuit judge, he says, "But the Act directly deals only with the marketing and not with the planting or production of tobacco" (R. 184). A farmer plants and cultivates his money crop with the sole end in view of marketing it. Short of a penal statute prohibiting overproduction, we can conceive of no more effective way of controlling or limiting production than

the assessment of a confiscatory penalty on the selling price of the farmer's money crop. "Congress may not do indirectly what it is forbidden to do directly." If it may not control production under the guise of the commerce clause, it has no power to control production by so-called marketing regulations, which in fact are not valid regulations of marketing, but provide only for the collection of a penalty from the producer.

Everybody, who knows anything about this Act or its operation, knows that it is a "crop-control act" and so designates it. In fact the Soil Conservation and Domestic Allotment Act is called the "voluntary crop-control act," while this Act, cumulative in its provisions to the other, is universally designated "the *mandatory* crop-control act." We can not think that this court will shut its eyes to what everybody knows.

If Congress has the power to limit and prorate production among farmers, it likewise has the power to limit and prorate, among the states and among the individual producers, the quantity of production of any industry, where a large percentage of its products eventually moves in interstate commerce. The exercise of such powers obliterates all state and national lines.

In the congressional findings, we find that the reason given for the exercise of such control is that farmers are unable without federal assistance to control effectively the orderly marketing of their commodities. We cannot here question the wisdom of this Act, but we do say that the above reason, if true, does not render the Act constitutional, and that if federal control of farm production is wise, it should be preceded by an amendment to the Constitution delegating to Congress the power to exercise control.

Point B.

THE PROVISIONS OF SUBSECTION (B) OF SECTION 313 OF THE ACT RELATING TO THE ESTABLISHMENT OF MARKETING QUOTAS ARE SO VAGUE, UNCERTAIN AND INDEFINITE IN THEIR TERMS AS UNCONSTITUTIONALLY TO VEST IN THE SECRETARY OF AGRICULTURE LEGISLATIVE POWERS AND FURNISH NO PROTECTION TO PRODUCERS AGAINST ARBITRARY ACTION ON THE PART OF THE SECRETARY IN THE ESTABLISHMENT OF FARM MARKETING QUOTAS, THEREBY CONSTITUTING A DENIAL OF DUE PROCESS OF LAW TO PRODUCERS.

The degree of certainty required of standards of this kind varies with the different circumstances and conditions surrounding each case. In this Act the standard was directed to be applied to the 1938 tobacco crop of appellants which was in process of cultivation when the Act was approved. The standard was not and, because of the effective date of the Act, probably could not have been interpreted by the regulations of the Secretary, nor probably could the farm quotas have been allotted, as they were allotted by him, until after the 1938 crop had been cultivated and harvested at great labor and expense. Not until then did appellants "know or have any way of knowing even the approximate number of pounds of tobacco each might raise and sell free of penalty," a condition admitted by defendants to be true. This admission demonstrates that the standard was so uncertain and indefinite that no one could guess how it should or would be interpreted and applied, and that, therefore, appellants knew not what reasonable steps to take to avoid the loss incident to production in excess of undetermined quotas.

The penalty assessed is not consistent with any purpose other than to inflict punishment for the violation of the Act, and the word *penalty* carries with it the idea of punishment for violation of a law. "The validity of

its provisions must consequently be tested on the basis of the terms employed." The Act is therefore in the nature of a penal statute and at least approximately the same degree of certainty in its terms should be required as is required of a criminal statute.

The Secretary, however, is permitted to roam at will in determining the meaning of the words "past marketing," in determining whether these words apply to any one or more previous years; in determining the relative effect of each of the many designated factors on the amount of the farm quota. Interpretation and application of this standard by different persons would necessarily result differently in each case.

It has been suggested that the admission in the bill of complaint and in the stipulation of facts to the effect, that, for the purposes of this case, the farm marketing quotas were established in accordance with the applicable provisions of the Act and regulations of the Secretary, constitute a waiver of objections to the uncertainty of the standard. We do not think so nor do defendants so contend. To successfully attack the *amount* of the allotted quotas, as such, requires proof that the amount is erroneous, to prove which requires proof of a correct determination of the quota—an insurmountable obstacle. Consequently the plaintiffs could only attack the *right* to assess *any* quota on the grounds that the Act is unconstitutional, the standard uncertain and the Act unconstitutionally applied to the 1938 crop.

The uncertainty of the standard is specified in detail in Paragraph 3 of the amendment of the bill of complaint (R. 25), and it is illustrated by the instructions of the Secretary as outlined in his "Procedure for the Determination of Flue-cured Tobacco Marketing Quotas" (R. 128). We request the court to read these parts of the record. The standard outlined in said section of the act is in the appendix attached hereto.

Under the circumstances of this case, therefore, there should be strict compliance with the general rule fixed

for such standards in the case of *Conally* v. *General Constr.*, 269 U. S. 385, 391, which reads as follows:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.
>
> "In the light of our decision, it appears upon a mere inspection that these general words and phrases are so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process of law. It is not the penalty itself that is invalid but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all." *Champlin Refining Co.* v. *Corporation Com.*, 286 U. S. 110, 243, and cases cited on page 243.

We respectfully contend that no farmer could possibly calculate in advance of allotment the approximate amount of quota to which he might be entitled under the provisions of this standard.

Point C.

THE ACT WAS UNCONSTITUTIONALLY APPLIED TO THE 1938 CROP OF APPELLANTS FOR THE REASON THAT THE ESTABLISHMENT OF MARKETING QUOTAS FOR THE FARMS OF APPELLANTS, SUBSEQUENT TO THE PLANTING, CULTIVATION AND GATHERING OF THEIR RESPECTIVE CROPS, DURING WHICH TIME APPELLANTS DID NOT KNOW AND HAD NO MEANS OF KNOWING EVEN THE APPROXIMATE NUMBER OF POUNDS OF TOBACCO EACH MIGHT PRODUCE AND SELL FREE OF PENALTY, RENDERED IT IMPOSSIBLE FOR THEM TO TAKE

INTO CONSIDERATION DURING SAID TIME POSSIBLE RESTRICTIONS ON MARKETING AND AVOID THE LABOR AND EXPENSE OF PRODUCING TOBACCO IN EXCESS OF UNANNOUNCED AND UNDETERMINED MARKETING QUOTAS, THEREBY DEPRIVING THEM OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

A portion of the argument under Point B is applicable here and will not be repeated.

For a full statement of the time and conditions under which the 1938 tobacco crop of appellants was planted and cultivated, as related to the passage and operation of the Act, showing how these facts sustain the conclusion that the Act was unconstitutionally applied to the 1938 crop of appellants, we request the court to read Paragraph 5 of the amendment to the bill of complaint (R. 27) (the allegations of fact therein alleged being admitted by defendants), and stipulation of facts (R. 45).

In the exercise of powers under the commerce clause Congress and its agencies must conform to the due process clause.

As shown by the record above referred to, at the time of the passage, approval and effective date of the Act, appellants had already done a large amount of painstaking work and expended considerable sums of money on their 1938 crop. The proclamation of the national quota followed by the proclamation of state quotas on July 22nd, 1938, gave them no further light. No farmer knew at any time during this period whether or not it was necessary, in order to comply with the Act, to abandon cultivation of any part of his planned or planted acreage on which his labor and money had already been spent. The standard for allotting farm quotas threw no light on this problem as it is admitted that, "until the announcement of the individual quotas petitioners did not know and had no way of knowing the probable amount of same," and that, prior to that time, "petitioners had no means of estimating the quota that might be allotted to each."

The amount of the loss that each might sustain depended upon his past lawful acts.

> "A penalty or tax, the amount of which is made to depend upon past lawful transactions, is violative of the due process clause."
>
> *Nichols* v. *Coolidge*, 274 U. S. 531, 542.

It is palpable sophistry to argue that the penalty is on the marketing rather than on overproduction. If a farmer cannot sell his perishable money crop, he is certainly penalized the total cost of production. So far as he is concerned, his tobacco crop is perishable. He cannot preserve it as he has no redrying facilities, nor will the operators of redrying plants receive the tobacco of each individual farmer for this purpose. There were no cooperative marketing associations in Georgia or Florida with redrying plants available to farmers as is shown by the record hereinbefore briefed under the head of "Material Facts of the Cause." In other words, the farmer must either promptly sell his tobacco crop or destroy it; or it will destroy itself. Finding themselves in this dilemma the farmers sell at half price rather than incur a one hundred per cent penalty by not selling.

The field of administrative law is comparatively unexplored by many of us, but we think that, although the facts in the two cases differ, the following excerpts from the opinion of this court in the case of *Morgan* v. *United States*, 304 U. S. 1, 22, are peculiarly applicable:

> "In administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play * * * The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is to their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex so-

ciety are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

As applied to the sale of the 1938 crop of appellants, the Act is arbitrarily retroactive; it is tantamount to confiscation without compensation; it fails to observe the "basic concepts of fair play"; it is an "arbitrary exercise of the powers of government unrestrained by established principles of private rights and distributive justice" (and these rights include every essential incident to their enjoyment, including the right to dispose of property without drastic restrictions unreasonably imposed).

VI.

CONCLUSION.

Our courts have uniformly and jealously protected such rights as freedom of speech, the right of assembly, and freedom of the press, guaranteed by the Bill of Rights. They should continue to equally protect the similarly guaranteed rights of the states against invasion of their reserved powers, and the right of every citizen that he shall not be deprived of his property, as well as of his life and liberty, without due process of law.

The facts of this case demand a holding that the challenged provisions of the Act are unconstitutional, that the standards referred to are uncertain, that the Act was unconstitutionally applied to the 1938 crop, and that the impounded penalties be returned to appellants.

Respectfully submitted,

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Counsel for Appellants.

APPENDIX.

Sections 312, 313 and 314 of the Agricultural Adjustment Act of 1938.

National Marketing Quota

Sec. 312. (a) Whenever, on the 15th day of November of any calendar year, the Secretary finds that the total supply of tobacco as of the beginning of the marketing year then current exceeds the reserve supply level therefor, the Secretary shall proclaim the amount of such total supply, and, beginning on the first day of the marketing year next following and continuing throughout such year, a national marketing quota shall be in effect for the tobacco marketed during such marketing year. The Secretary shall also determine and specify in such proclamation the amount of the national marketing quota in terms of the total quantity of tobacco which may be marketed, which will make available during such marketing year a supply of tobacco equal to the reserve supply level. Such proclamation shall be made not later than the 1st day of December in such year.

(c) Within thirty days after the date of the issuance of the proclamation specified in subsection (a) of this section, the Secretary shall conduct a referendum of farmers who were engaged in production of the crop of tobacco harvested prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quota. If in the case of burley tobacco, or fire-cured and dark air-cured tobacco, respectively, farmers would be subject to a national quota for the next succeeding marketing year pursuant to the provisions of subsection (a) of this section, and also to a national marketing quota for the current marketing year pursuant to the provisions of subsection (b) of this section, the referendum

shall provide for voting with respect to each such quota. If more than one-third of the farmers voting in the referendum oppose such quota, the Secretary shall, prior to the 1st day of January, proclaim the result of the referendum and such quota shall not be effective thereafter.

(d) In connection with the determination and proclamation of any marketing quota for the 1938-1939 marketing year, the determination by the Secretary pursuant to subsection (a) of this secton shall be made and proclaimed within fifteen days following the date of the enactment of this Act, and the proclamation of the Secretary pursuant to subsection (c) of this section shall be made within forty-five days following the date of the enactment of this Act.

Sec. 313. (a) The national marketing quota for tobacco established pursuant to the provisions of section 312, less the amount to be allotted under subsection (c) of this section, shall be apportioned by the Secretary among the several States on the basis of the total production of tobacco in each State during the five calendar years immediately preceding the calendar year in which the quota is proclaimed (plus, in applicable years, the normal production on the acreage diverted under previous agricultural adjustment and conservation programs), with such adjustments as are determined to be necessary to make correction for abnormal conditions of production, for small farms, and for trends in production, giving due consideration to seed bed and other plant diseases during such five-year period: *Provided, however,* That to prevent in any case too sharp and sudden reduction in acreage of tobacco production in any State, the marketing quota for flue-cured tobacco for any State for any marketing year shall not be reduced to a point less than 75 per centum of the production of flue-cured tobacco in such State for the year 1937.

(b) The Secretary shall provide, through the local committees, for the allotment of the marketing quota for

any State among the farms on which tobacco is produced, on the basis of the following: Past marketing of tobacco, making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That, except for farms on which for the first time in five years tobacco is produced to be marketed in the marketing year for which the quota is effective, the marketing quota for any farm shall not be less than the smaller of either (1) three thousand two hundred pounds, in the case of flue-cured tobacco, and two thousand four hundred pounds, in the case of other kinds of tobacco, or (2) the average tobacco production for the farm during the preceding three years, plus the average normal production of any tobacco acreage diverted under agricultural adjustment and conservation programs during such preceding three years.

(c) The Secretary shall provide, through local committees, for the allotment of not in excess of 5 per centum of the national marketing quota (1) to farms in any State whether it has a State quota or not on which for the first time in five years tobacco is produced to be marketed in the year for which the quota is effective and (2) for further increase of allotments to small farms pursuant to the proviso in subsection (b) of this section on the basis of the following: Land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That farm marketing quotas established pursuant to this subsection for farms on which tobacco is produced for the first time in five years shall not exceed 75 per centum of the farm marketing quotas established pursuant to subsection (b) of this section for farms which are similar with respect to the following: Land, labor, and equipment available for the

production of tobacco, crop-rotation practices, and the soil and other physical factors affecting the production of tobacco.

(d) Farm marketing quotas may be transferred only in such manner and subject to such conditions as the Secretary may prescribe by regulations.

(e) In case of flue-cured tobacco, the national quota for 1938 is increased by a number of pounds required to provide for each State in addition to the State poundage allotment a poundage not in excess of **4 per centum** of the allotment which shall be apportioned in amounts which the Secretary determines to be fair and reasonable to farms in the State receiving allotments under the Agricultural Adjustment Act of 1938 which the Secretary determines are inadequate in view of past production of tobacco, and for each year by a number of pounds sufficient to assure that any State receiving a State poundage allotment of flue-cured tobacco shall receive a minimum State poundage allotment of flue-cured tobacco equal to the average national yield for the preceding five years of five hundred acres of such tobacco.

PENALTIES

Sec. 314. The marketing of any tobacco in excess of the marketing quota for the farm on which the tobacco is produced, except the marketing of any such tobacco for nicotine or other byproduct uses, shall be subject to a penalty of 50 per centum of the market price of such tobacco on the date of such marketing, or if the following rates are higher, 3 cents per pound in the case of flue-cured, Maryland, or burley, and 2 cents per pound in the case of all other kinds of tobacco. Such penalty shall be paid by the person who acquires such tobacco from the producer but an amount equivalent to the penalty may be deducted by the buyer from the price paid to the producer in case such tobacco is marketed by sale; or,

the tobacco is marketed by the producer through a warehouseman or other agent, such penalty shall be paid by such warehouseman or agent who may deduct an amount equivalent to the penalty from the price paid to the producer: *Provided*, That in case any tobacco is marketed directly to any person outside the United States the penalty shall be paid and remitted by the producer.

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 505.

JAMES H. MULFORD ET AL., APPELLANTS,

VS.

NAT SMITH ET AL., APPELLEES.

BRIEF OF APPELLEES, NAT SMITH ET AL. (ORIGINAL DEFENDANTS IN COURT BELOW).

OMER W. FRANKLIN,
Counsel for Nat Smith et al., Appellees.

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In this case Nat Smith *et al.*, original defendants, filed their plea and answer admitting the facts alleged in the appellants' bill, but, for want of sufficient information, did not admit or deny the conclusions of law therein contained (Rec. pp. 33 to 37).

They allege in Paragraphs 22 and 23 (Rec. p. 36) of their plea and answer that they occupy a position analogous to that of an innocent and involuntary stakeholder holding the funds claimed by the appellants and by the Secretary of Agriculture; that they come into court asking for the protection of the court and for an order directing the disposition of the funds in such manner as will protect them from adverse claims of all parties; and that they be relieved from the payment of court costs regardless of the

final outcome. They conclude their plea and answer with a prayer that they be relieved of any costs that may be incurred in the cause; that the court pass such protective orders, judgments and decrees as may protect them from any loss by reason of the imposition of the penalties; and that they be decreed by the court to be in a position analogous to a stakeholder of the funds collected by them as penalties and paid or to be paid into the registry of the court, and for general relief (Rec. p. 37).

All the pleadings in the cause undisputably show that the original defendants, Nat Smith *et al.*, have been against their will placed in the position of an innocent stakeholder. They, therefore, submit to the court that they should not be charged with any costs in the cause and that an appropriate order should be entered to protect them from any loss.

It seems well settled under the equity practice of the federal court that the taxing of costs in an equity case lies within the discretion of the court and the court can tax such costs against such parties to the cause as may seem just and proper, and, likewise, may relieve such party or parties to the cause of any costs that may be incurred.

> "In federal courts of equity the giving or withholding costs or the apportionment and division thereof is within the discretion of the court, which is to be exercised, not arbitrarily, but with reference to the general principles of equity and the special circumstances of each case."
>
> *Kell* v. *Trenchard et al.*, 146 Fed. 245, 246 (2).

Also, see to the same effect:

> *Pennsylvania Co. for Insurance on Lives and Granting Annuities* v. *Jacksonville, T. & K. W. Ry. Co.*, 66 Fed. 421 (2).
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> *Bliss* v. *Anaconda Copper Mining Co.*, 167 Fed. 1024.
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Duplate Corporation v. *Triplex Safety Glass Co.*, 81 F. (2d) 352, 353 (14).

H. H. Robertson Co. v. *Klauer Mfg. Co.*, 98 F. (2d) 150 (9).

The new Federal Rules of Civil Procedure do not seem to have changed this principle. Rule 54 (d), so far as relevant here, provides:

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; * * *"

It is respectfully submitted that the circumstances of this case, as disclosed by all the pleadings therein, would seem to demand that this court should direct that the original defendants in the cause, Nat Smith *et al.*, be relieved of all costs in the case, and that appropriate orders be included in the final decree protecting them from any loss in this respect.

Respectfully submitted,

OMER W. FRANKLIN,
Counsel for Appellees, Nat Smith et al. (Original Defendants).

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Clerk

No. 505

In the Supreme Court of the United States

OCTOBER TERM, 1938

JAMES H. MULFORD ET AL., APPELLANTS

v.

NAT SMITH ET AL., AND THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 505

JAMES H. MULFORD ET AL., APPELLANTS

v.

NAT SMITH ET AL., AND THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 183) is reported in 24 F. Supp. 919.

JURISDICTION

Jurisdiction of the Court rests on Section 3 of the Act of August 24, 1937, c. 754, § 3, 50 Stat. 752 (28 U. S. C. Supp. III, Sec. 380a). The decree of the District Court was signed October 5, 1938, and entered October 7, 1938. The petition for appeal was presented and allowed October 18,

1938, and filed October 21, 1938. The case was docketed in this Court December 5, 1938. The Court noted probable jurisdiction January 3, 1939.

QUESTIONS PRESENTED

1. Whether the provisions of the Agricultural Adjustment Act of 1938 for the establishment of marketing quotas for flue-cured tobacco are a constitutional exercise of the power of Congress to regulate interstate and foreign commerce.

2. Whether those provisions of the Agricultural Adjustment Act of 1938 provide for an unconstitutional delegation by Congress of its legislative powers.

3. Whether those provisions of the Agricultural Adjustment Act of 1938 deprive the appellants of liberty or property in violation of the Fifth Amendment to the Constitution of the United States.

4. Whether those provisions of the Agricultural Adjustment Act of 1938 as applied in 1938 to the marketing of flue-cured tobacco produced before the establishment of farm marketing quotas for 1938 deprive the appellants of property in violation of the Fifth Amendment to the Constitution of the United States.

NATURE OF THE PROCEEDING

The appellants, plaintiffs below, are numerous growers of flue-cured tobacco whose farms are lo-

cated in southern Georgia and northern Florida (R. 44). Each of the defendants below, and appellees here (with the exception, of course, of the United States), operates one or more tobacco auction warehouses in Valdosta, Lowndes County, Georgia, near the Florida border (R. 44).

During the 1938 flue-cured tobacco marketing season, each of the appellants marketed, through one or more of the appellees as warehouseman, flue-cured tobacco in excess of the marketing quota established for his farm under Section 313 of the Agricultural Adjustment Act of 1938 (52 Stat. 31, as amended, U. S. C., Title 7, Secs. 1281, *et seq.*) (R. 44). Section 314 of that Act requires tobacco auction warehousemen to pay to the Secretary of Agriculture a penalty equal to 50 percent of the price of any tobacco,[1] sold through them, in excess of the marketing quotas for the farms on which the tobacco was grown, and permits them to deduct the amount of the penalty from the prices paid to producers.

The appellants brought this suit in the Superior Court of Lowndes County, Georgia, to enjoin the warehousemen from deducting amounts equivalent to such penalties from the price paid to them for such excess tobacco and from remitting such amounts to the Secretary of Agriculture, on the alleged ground that the provisions of Sections 312,

[1] The minimum penalty is three cents per pound (Sec. 314).

313 and 314 of the Act, which provide for the quotas and prescribe the penalties, are unconstitutional.

The warehousemen, as defendants, removed the case to the United States District Court for the Southern District of Georgia, and the United States intervened as a party defendant in the District Court under Section 1 of the Act of August 24, 1937 (c. 754, Sec. 1, 50 Stat. 751 (28 U. S. C. Supp. III, Sec. 401)). On September 23, 1938, the case was heard on a stipulated record by a three-judge court established pursuant to Section 3 of that Act (28 U. S. C. Supp. III, Sec. 380 (a)). That court upheld the challenged provisions of the Act. The appellants ask this Court to reverse that decision.

STATUTE INVOLVED

The legislation here challenged comprises only those portions of the Agricultural Adjustment Act of 1938 which (1) provide that when the supply of flue-cured tobacco is found to exceed a level defined in the Act as the "reserve supply level," a national marketing quota shall become effective which will permit enough flue-cured tobacco to be marketed during the next marketing year to maintain the supply at the reserve supply level, (2) provide for the apportionment of the national quota—in terms of pounds which may be marketed—to the farms on which such tobacco is grown, and (3) provide for the payment of penalties by tobacco

auction warehousemen in connection with the marketing of flue-cured tobacco, in excess of such farm marketing quotas.

The statute of which these provisions are a part comprises five titles, and contains, in addition to the provisions here challenged, many provisions, not relevant to this case, which deal in varying ways with many other phases of the problems of agriculture.[2]

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[2] The Act was approved February 16, 1938 (52 Stat. 31). Amendments were approved March 26, 1938 (52 Stat. 120); April 7, 1938 (52 Stat. 202); May 31, 1938 (52 Stat. 586); and June 20, 1938 (52 Stat. 775).

This case relates solely to the provisions in Title III for marketing quotas for flue-cured tobacco. These are to be found primarily in *Sub-title B, Marketing Quotas, Part 1*, "*Marketing Quotas—Tobacco*," which comprises Sections 311 to 314 of the Act. The appellants' bill as amended seeks to have declared unconstitutional only Section 312 (a), (b), (c), (d), and (e); Section 313 (a), (b), (c), and (d), and Section 314 (R. 3, 9, 29).

However, in order to understand fully the operation of the quota provisions, it is necessary to refer to some of the definitions contained in Section 301, to some of the general administrative provisions found in Sections 361 to 376, to Sections 388 and 389, authorizing utilization of local agencies and the personnel of the Agricultural Adjustment Administration in carrying out the Act, and to Section 390 relating to separability.

These provisions of the Act are all set out in the Appendix, p. 177, *infra*. In this brief, in the interest of brevity we shall refer to them as "the Act", to the exclusion of the provisions not involved in this case. Moreover, references in this brief to "tobacco" will apply to flue-cured tobacco only, unless the context indicates otherwise, and references to the marketing year 1938 shall be taken to mean the

The provisions which principally affect the questions raised by this case may be summarized as follows:

LEGISLATIVE FINDING

Section 311 is a summary finding by Congress of the facts concerning the marketing of tobacco which, in the judgment of Congress, require, and, under the Constitution, justify the exercise of the federal commerce power through the regulation of tobacco marketing which the challenged provisions impose.

This finding states the determination by Congress that the marketing of tobacco is "one of the great basic industries of the United States with

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marketing year for flue-cured tobacco beginning July 1, 1938, and ending June 30, 1939.

Title I contains amendments to the Soil Conservation and Domestic Allotment Act. Title II provides for arranging adjustments in freight rates for farm products; for means of discovering and developing new uses and markets for farm products, and for continuation of the provisions previously made for distribution of surplus agricultural commodities for relief purposes through the Federal Surplus Commodities Corporation. Title IV provides for taking up and cancelling certain cotton pool participation trust certificates issued in connection with the 1933 Cotton Producers Pool. Title V provides for a federal crop insurance corporation and its operation.

Title III includes, in addition to the provisions here challenged, provisions for loans on agricultural commodities; an authorization for the making of parity payments to producers of certain farm products if, and when, funds are appropriated for that purpose; and provisions for marketing quotas for corn, wheat, cotton, and rice. None of those other provisions of Title III are involved in this case.

ramifying activities which directly affects interstate and foreign commerce"; that stable conditions in the marketing of tobacco are necessary to the general welfare; that tobacco is sold on a national market and, with its products, moves almost wholly in interstate and foreign commerce; that for reasons beyond their control farmers are unable, without federal assistance, to accomplish the orderly marketing of tobacco; that, consequently, abnormally excessive supplies are produced and dumped indiscriminately on the national market; that the disorderly marketing of such excessive supplies burdens and obstructs interstate and foreign commerce by its effect upon the volume of tobacco marketed in such commerce, by disrupting orderly marketing, by causing reduction of tobacco prices and consequent injury to interstate and foreign commerce in tobacco, and by causing disparity between the price of tobacco in interstate and foreign commerce and the prices of industrial products in such commerce and consequently diminishing the volume of interstate and foreign commerce in industrial products.

The section concludes with the specific finding that whenever an abnormally excessive supply of tobacco exists, the marketing of tobacco by the producers directly and substantially affects interstate and foreign commerce in tobacco and that the establishment of quotas as prescribed by the Act becomes necessary and appropriate in order to pro-

mote, foster, and maintain an orderly flow of tobacco in interstate and foreign commerce.[3]

NATIONAL MARKETING QUOTA

In conformity with these findings, the Act does not provide for continuous regulation of tobacco marketing. The regulation becomes effective only when the Secretary of Agriculture has found that the supply of tobacco exceeds an amount—the reserve supply level—determined by Congress to be so great as to threaten interstate and foreign commerce with the disruption described in Section 311.

More specifically the Act provides that whenever, on November 15th of any year, the Secretary of

[3] This finding, although summary in form, embraces legislative conclusions based upon long experience and extensive study of agricultural problems by Congress. The facts presented to Congress as the basis for the tobacco quota provisions are somewhat more fully set out in the reports of the House and Senate Committees on the Bill which eventually became the Agricultural Adjustment Act of 1938. The pertinent portions of these reports appear in the Appendix at pages 205 to 240. These in turn reflect the vast accumulation of facts available to Congress, relating to the tobacco industry in particular as well as agriculture generally. A subcommittee of the Senate Committee on Agriculture and Forestry had held many hearings throughout the country during 1937, concerning problems relating to agriculture. The matters covered by such hearings are contained in a document of 4,633 pages, entitled *General Farm Legislation*, of which 1,916 pages relate to cotton, tobacco, and rice. Moreover, the committees of Congress had available reports of many earlier studies and hearings dealing with farm problems. The titles and subjects of these reports are set forth in the Record (R. 47–49).

Agriculture finds that the total supply of tobacco[4] as of July 1st of that year, exceeded the reserve supply level,[5] he shall, by December 1st, proclaim the total supply, and a national marketing quota shall be in effect throughout the marketing year which commences the following July 1st (Sec. 312 (a)).[6]

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[4] The *total supply* "for any marketing year shall be the carry-over at the beginning of such marketing year, plus the estimated production thereof in the United States during the calendar year in which such marketing year begins" (Sec. 301 (b) (16) (B). The marketing year begins July 1st (Sec. 301 (b) (7)).

The *carry-over* for any marketing year is the quantity on hand on July 1, which was produced in the United States *before* the beginning of that calendar year (Sec. 301 (b) (3) (C)). It does not include any of the current year's production.

[5] The *reserve supply level* is "the normal supply plus 5 per centum thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty" (Sec. 301 (b) (14) (B)).

The *normal supply* is the sum of (a) 275 percent of *a normal year's domestic consumption*, and (b) 165 percent of *a normal year's exports* (Sec. 301 (b) (10) (B)).

A normal year's domestic consumption and *a normal year's exports* are the ten-year annual average domestic consumption and the ten-year annual average exports, respectively, adjusted for current trends in such consumption or exports (Sec. 301 (b) (11) (B) and Sec. 301 (b) (12)).

[6] The Act not having been approved until several months after November 15, 1937, provided, with respect to the marketing year beginning July 1, 1938, the year for which the quotas involved in this case were effective, that the proclamation of the total supply and of the national marketing quota should be made within fifteen days after the approval of the Act (Sec. 312 (d)).

At the same time the Secretary is to proclaim also the amount of the national marketing quota (Sec. 312 (a)) in terms of the total quantity of tobacco which may be marketed during the ensuing marketing year. This marketing quota is the amount which the Secretary finds will make available during the ensuing marketing year a supply of tobacco equal to the reserve supply level (Sec. 312 (a)).[1]

APPORTIONMENT OF NATIONAL QUOTA TO FARMS

Within thirty days after proclamation of the total supply and the national marketing quota, the Secretary is to conduct a referendum among farmers who produced the tobacco crop harvested prior to holding of the referendum, to determine whether such farmers favor or oppose such quota. If more than one-third of the farmers voting in the referendum oppose the quota, the Secretary is to proclaim the result of the referendum before Janu-

[1] The Secretary is authorized to terminate or increase a national marketing quota which has become effective if he finds, upon investigation, that the operation of the quota will cause the amount of tobacco free of marketing restrictions for the then current marketing year to be less than the normal supply (Sec. 371 (a)) or, if upon investigation, he finds it necessary that the quota be increased because of a national emergency or a material increase in export demand (Sec. 371 (b)). In case of increases under either of these provisions the farm marketing quota of each farm is to be increased proportionately.

ary 1, and in such case the quota shall not be effective thereafter (Sec. 312 (e)).[8]

The Act provides next for the apportionment of the national quota. It is first apportioned among the states (Sec. 313 (a)). Each state's share is based on the total quantity of tobacco produced in the state during the five years immediately before the year in which the quota is proclaimed, plus the normal production of the acreage in the State diverted from tobacco under any agricultural adjustment or conservation program operative during any of those years. This basic determination is subject to adjustments found necessary to correct the state allotments for plant diseases, production trends or abnormal conditions of production which affected production in the several states during the five-year period, and to make provision for the minimum requirements for small farms. In order to avoid excessively sharp reductions the Act provides that no State is to be allotted an amount less than 75 percent of its 1937 tobacco production.

After the State allotment is made it is apportioned among farms in the State on which tobacco is produced in the current year and has been produced previously in one or more of the four years preceding the year in which the quotas are to be-

[8]The Act not having been approved until February 1938, provided that with respect to the 1938 quotas any proclamation of the result of the referendum should be made within 45 days after approval of the Act.

come effective (Sec. 313 (b)).[9] These will be referred to as "old" tobacco farms. The apportionment to old tobacco farms is made on the basis of: "past marketing of tobacco making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco." The Act provides a minimum allotment of 3,200 pounds or the average production during the preceding three years, plus the average normal production of any acreage diverted from tobacco under the agricultural adjustment or conservation programs operative during any such years, whichever is the smaller (Sec. 313 (b)). The Act provides also for allotments to "new" tobacco farms to be made on a slightly different basis.[10]

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[9] By successive amendments approved April 7, 1938, and May 31, 1938 (Sec. 313 (e)), the poundage available for apportionment in each state for 1938 was increased by an amount not exceeding four percent of the state's allotment. This additional poundage was required to be apportioned, in such amounts as the Secretary determined to be fair and reasonable, to farms in the state receiving allotments under the Act which the Secretary should find to be inadequate in view of past production. The national quota was increased in proportion and the additional poundage thus made available to each state was apportioned as an additional allotment to individual old tobacco farms. None of it was apportioned to new tobacco farms, inasmuch as they had no history of past marketing (R. 135).

[10] A reserve of not to exceed 5 percent of the national quota is to be withheld from the apportionment to the states

The apportionment of the quota to individual farms is made through local committees of farmers [11] according to the standards just described, amplified in detail by the regulations and instructions issued by the Secretary (R. 42, 43, 103–173). Each farmer is notified of the marketing quota for his farm by mail, and lists of the quotas of individual farms in each county or other local administrative area are required to be kept freely available for public inspection in the county or local area where the farm is located (Sec. 362; R. 153, 154). The Act and the regulations provide for review of the quotas, including judicial review (Sec. 363–368; R.

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and used for making apportionments directly to farms in any state (whether the state has a quota or not) on which, for the first time in five years, tobacco is produced to be marketed in the marketing year for which the quota is effective (these will be referred to as "new tobacco farms") and for increasing allotments required to be made to small, old tobacco farms (see Sec. 313 (b) and Sec. 313 (c)).

These new tobacco farms have no history of past marketing during the immediately preceding years. Accordingly, the apportionment made to such farms is based on the same factors as for "old" farms but without any allowance for past marketing; but their quotas are not to exceed 75 percent of the quotas established for similar old farms.

The minimum allotment for small farms does not apply to new tobacco farms (Sec. 313 (b)).

[11] The local committees used in the determination of the farm marketing quotas, as provided for by Section 313 (b) and (c) are, by virtue of Section 388 of the Act, the same committees as those established under Section 8 (b) of the Soil Conservation and Domestic Allotment Act as amended (Appendix, pp. 178, 202).

155–162),[12] and for their transfer subject to regulations (Sec. 313 (d); R. 114–117).

PENALTIES FOR SALE OF EXCESS TOBACCO

In case any tobacco in excess of the quota for the farm on which the tobacco is produced,[13] is marketed through a warehouseman, the warehouseman is required to pay to the Secretary of Agriculture a penalty[14] equal to 50 percent of the

[12] The Act provides for review of any quota upon application by the farmer within fifteen days after the notice is mailed. The first review is by a committee of three farmers appointed by the Secretary (Sec. 363–364; R. 156–157). The regulations governing such review provide for notice and hearing before the review committee (R. 157–161). Unless application for review is made within fifteen days the quota originally allotted is final (Sec. 363).

If the farmer is dissatisfied with the review committee's determination, he may, within fifteen days after notice of that determination, file a bill in equity against the review committee in the United States District Court or commence proceedings for review in any State court of record having general jurisdiction and sitting in the county or district in which the farm is located (Sec. 365–367; R. 161, 162). Increases in individual quotas resulting from such review do not require proportionate reduction in other quotas (Sec. 368).

[13] Except tobacco sold for nicotine or other by-product uses (Sec. 314) and except tobacco grown for experimental purposes only by a publicly owned experimental station (Sec. 372 (d)).

[14] (Sec. 314 and Sec. 372 (b)). In case the tobacco is marketed directly to a person outside the United States, the producer is required to pay the penalty. In case the tobacco is sold by the grower directly to the purchaser without intervention of a warehouseman or other agent, the buyer is required to pay the penalty, but the buyer may deduct

market price of the excess tobacco.[15] The warehouseman may deduct an amount equivalent to the penalty from the price paid to the seller for the tobacco (Sec. 314).[16]

The Act imposes no limitation upon the acreage of tobacco which may be planted or produced, and imposes no penalty for planting or producing a quantity of tobacco in excess of the marketing quota or for producing any quantity of tobacco whatever that the grower may choose to produce. Nor does it provide any criminal sanctions for enforcing limitation of marketings to the amount of the quotas.[17] If payment of such penalties should not be made, the sole legal remedy provided is a civil action by the United States for their recovery (Sec. 376).

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an amount equivalent to the penalty from the price paid to the grower (Sec. 314). All of the excess tobacco involved in this case was marketed through warehousemen.

[15] The penalty is to be three cents per pound if that rate is higher than 50 percent of the market price (Sec. 314).

[16] The Act provides (Sec. 372 (b),) for the collection of the penalties in such manner, at such time, and under such conditions as the Secretary prescribes by regulations and that the penalties collected shall be covered into the general fund of the Treasury of the United States. It provides also that the Secretary shall provide by regulations for refund, upon claim filed within a year after receipt of the payment by the Secretary, of penalties erroneously, illegally, or wrongfully collected.

[17] In order to aid the collection of penalties, the Act requires the Secretary to provide such regulations as are necessary for identifying the tobacco subject to quotas, and generally to prescribe regulations necessary for the enforce-

STATEMENT

A. HISTORY OF THE CASE

The Act was approved February 16, 1938. On February 18, 1938, the Secretary of Agriculture proclaimed his finding that the total supply of flue-cured tobacco for the marketing year beginning July 1, 1937, exceeded the reserve supply level and proclaimed the amount of the national marketing quota for the marketing year beginning July 1, 1938 [18] (R. 40, 93–95).

On March 12, 1938, a referendum was held among growers who had participated in the production of the 1937 tobacco crop to determine whether they favored or opposed the marketing quota (R. 41, 95–101). On March 25, 1938, the Secretary proclaimed that 86.2 percent of the growers voting favored the quota, while 13.8 percent opposed it (R. 41, 101).

On June 16, 1938, the Secretary issued instructions for determining flue-cured tobacco farm marketing quotas for 1938 and prescribed forms

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ment of the Act (Sec. 375). It also authorizes the Secretary to require the keeping of records and the making of reports. The sole criminal provision of the pertinent provisions of the Act is the imposition upon handlers other than producers of a fine of $500 for conviction of failure to make any report or keep any record required, or for making any false report or record (Sec. 373 (a) (b)).

[18] The total supply found was 1,733,000,000 pounds; the reserve supply level 1,681,000,000, and the national marketing quota, which would make the reserve supply level available the next marketing year, 705,000,000 pounds (R. 95).

for use in connection therewith (R. 43, 127–151). On July 13, 1938, the Secretary issued regulations governing the publication, notice, and review of farm marketing quotas and prescribed forms for use in connection with such regulations (R. 43, 151–172). On July 22, the Acting Secretary of Agriculture issued regulations relating generally to 1938 flue-cured tobacco marketing quotas, penalties, marketing cards, transfer of quotas, and records and reports. Forms were also prescribed for use in connection with such regulations (R. 42, 103–127).

On July 22, 1938, the Acting Secretary also announced the adjusted apportionment of the national marketing quota among states on the basis of estimated requirements for minimum allotments for small farms and on August 13, 1938, announced a revision of such apportionment based upon subsequent information concerning actual requirements of the states for minimum allotments for small farms (R. 41, 42, 102, 103).

The 1938 national marketing quota was apportioned to flue-cured tobacco farms, including the appellants' farms, in accordance with the Act and with the regulations and instructions referred to above (R. 44, 47). Each appellant received notice of his farm's marketing quota shortly before the opening of the auction markets, but after he had largely, if not wholly, completed the planting, harvesting, curing, and grading of his tobacco (R. 45).

The quota of each appellant's farm was less than the amount of tobacco which subsequently was marketed from his farm in 1938.[19]

On July 27, 1938, before the Valdosta market opened for the sale of tobacco, the appellants filed their bill of complaint in the Superior Court of Lowndes County, Georgia, seeking to have the warehousemen temporarily restrained and enjoined from deducting the amount of the penalties from the price paid them for any excess tobacco they might sell and from remitting the amount so deducted to the Secretary of Agriculture. They sought also a permanent injunction in similar terms and further appropriate relief (R. 1–9). The Georgia Court granted the temporary restraining order on July 27, 1938, and ordered the warehousemen to deduct the amount of the penalties and pay the amount deducted to the Clerk of the Court (R. 9, 10).

On August 3, 1938, by order of the Georgia Court, numerous other growers were allowed to intervene as parties plaintiff and to adopt the allegations and prayer of the original plaintiff's petition (R. 11).

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[19] The appellants do not complain of the amount, as such, of the quotas established for their farms (R. 44), and concede that the proclamation of the national quota by the Secretary, the general apportionment and adjustment of quotas and the establishment of the marketing quotas for appellants' farms were accomplished in accordance with the Act and the regulations and instructions issued under it, and that all of their quotas were accurately determined in accordance with regulations and instructions (R. 47).

During the 1938 marketing season which, in Georgia, began about the first of August and ended about the first of September, the several appellants marketed tobacco in excess of their quotas through one or another of the defendant warehousemen, and penalties have been deducted and paid into court (R. 44).

On petition of the defendant warehousemen, filed in the Georgia Court on August 5, 1938, the case was removed to the District Court of the United States for the Middle District of Georgia at Valdosta. On August 9, 1938, the clerk of the District Court certified to the Attorney General of the United States that the constitutionality of the Agricultural Adjustment Act of 1938 was drawn in question and on August 18, 1938, the United States District Court entered its order permitting the United States to intervene as a party defendant (R. 16–18). On August 26, 1938, pursuant to Sec. 3 of the Act of August 24, 1937, the Honorable Rufus E. Foster, Senior Judge of the Fifth Circuit, designated the Honorable Samuel H. Sibley, Circuit Judge, and the Honorable Charles B. Kennamer, United States District Judge, to participate with the Honorable Bascom S. Deaver, Judge of the United States District Court for the Middle District of Georgia, in the hearing and determination of the case (R. 18, 19). On the same date the District Court continued the restraining order, modified to provide for payment of penalties deducted to the Clerk of the District Court rather than to the clerk of the Georgia Court

(R. 22–24). On August 29, 1938, plaintiffs and intervening plaintiffs filed certain amendments to the bill of complaint, including prayers that Section 312 (a), (b), (c), (d), and (e), Section 313 (a), (b), (c), and (d), and Section 314 be declared unconstitutional, and further, that such provisions of the Act be declared unconstitutional insofar as they apply to the marketing of petitioners' tobacco during 1938, and that the penalties imposed as a result thereof be declared null and void (R. 24–29).

On September 2, 1938, an answer was filed on behalf of the defendant warehousemen and the same day the United States, as intervening defendant, filed its separate answer (R. 29–37). The defendant warehousemen asked merely that they be decreed to be in the position of a stakeholder of funds collected and paid or to be paid into the registry of the court, that they be relieved of costs, and that they be protected against loss by reason of the penalties (R. 37).

On September 23, 1938, the case was heard on a stipulated record by the three-judge court established as described above. That court, in a decree signed by Judges Sibley and Kennamer, October 5, 1938, and entered October 7, 1938, denied the injunction, dissolved the restraining order, and dismissed the bill, holding (1) that Sections 312, 313, and 314 of the Act were constitutional and (2) that the application of the Act to the marketing season of 1938 also was constitutional (R. 183–190). The

Court ordered the funds in the hands of the clerk to be returned to the parties and reserved jurisdiction to hear and determine any disputes concerning the fund (R. 190–191). Subsequently, with the consent of appellees, this portion of the decree was stayed until final disposition of the cause (R. 194–195).

The pleadings and evidence before the court below disclose the following especially pertinent facts:

B. THE PRODUCTION OF FLUE-CURED TOBACCO

"Flue-cured tobacco is by far the most important class of tobacco grown in the United States. In 1937 flue-cured tobacco represented 55 per cent of the total tobacco marketed by producers and 60 per cent of the farm value of all tobacco marketed by producers in the United States" (R. 74). Flue-cured tobacco is grown in the group of states ranging from Florida to Virginia, with a small quantity being produced in Alabama (R. 52–53).

The growing of the annual crop of flue-cured tobacco begins in Georgia and Florida in December with the preparation of seed beds, followed soon afterwards by preparation of the land to which the plants are to be transplanted (R. 45). A considerable quantity of fertilizer is usually applied to the land before transplanting, and additional fertilizer is often applied in the course of subsequent cultivation. Transplanting begins about the first of April in Georgia and Florida. Six

thousand or more plants per acre are set out. Soon after the plants begin to grow, cultivation, consisting of plowing, poisoning for insects and worms, topping and removal of suckers, is begun and continues throughout the growing season (R. 45, 50–51).

Harvesting and curing begins in June and early July in Georgia and Florida and continues until all suitable leaves on the stalks have been removed. Harvesting is accomplished by pulling off the leaves as they mature. From four to six such "croppings" are usually required to harvest a crop (R. 51). After harvesting the leaves are strung on sticks and placed in the curing barn, where, for three or four days, the tobacco is "cured" by the continuous application of heat through "flues"—large pipes laid about the floor of the barn so that the smoke from the fuel used does not come into contact with the tobacco (R. 51). After curing, the tobacco is packed away, to be removed from the sticks later, sorted or graded, and prepared for marketing when the markets open. In Georgia and Florida the markets open about the first of August (R. 45, 51).

The steps just described had been largely, if not wholly completed by the appellants in 1938 before they received official notice of their 1938 farm marketing quotas under the Act. They received such notice, however, before the opening of the auction markets (R. 45).

C. METHODS OF MARKETING TOBACCO

Tobacco of all kinds is marketed principally through middlemen—auction warehousemen, wholesale merchants, exporters, export agents, brokers and cooperative marketing associations (R. 55). Approximately 85 percent of all tobacco is sold through auction warehouses. At present, sale through auction warehouses is about the only method of marketing tobacco extensively available in the flue-cured tobacco producing areas (R. 56). A few sales are made to dealers outside the auction warehouses, and occasionally sales are made through contracts entered into during the growing season, or are negotiated at the farm after the tobacco is harvested, but these methods are not widely used in selling flue-cured tobacco (R. 56).

In earlier years large quantities of flue-cured tobacco have been marketed through cooperative associations of producers (R. 56, 88–90). This method has long been used and continues to be used extensively in the marketing of Maryland and cigar leaf tobacco (R. 56). It could be equally available to flue-cured tobacco growers in lieu of selling at auction warehouses, although no cooperative associations were in operation in Florida and south Georgia during the 1938 marketing season (R. 56).

Before flue-cured tobacco can be kept in satisfactory condition in storage for future use it must

be redried and packed in hogsheads.[20] The buyers treat the tobacco they purchase in this way and store it from one to five years before manufacture.[21] Individual growers usually have been unable to do so because, individually, they have lacked facilities for redrying tobacco. By forming cooperative associations they can either operate their own redrying plants or have their tobacco redried in private plants (R. 56). They can thereby hold for later, more advantageous sale, tobacco which cannot be sold profitably during the short marketing season on the auction markets. Although cooperative associations have failed when they endeavored

[20] Most leaf tobacco is redried and stored before manufacture. Flue-cured tobacco delivered at the warehouse by the grower usually contains from 20 to 25 percent moisture which tends to prevent breakage in handling. Promptly after sale the tobacco is moved to redrying plants, where practically all of the original moisture is removed and a controlled amount added to condition the tobacco for packing in hogsheads. Redrying of flue-cured tobacco usually occurs within a week after purchase. Most of the dealers and manufacturers own redrying plants which are concentrated principally at manufacturing plants, points of export, and centers of supply (R. 62–64).

[21] In storage the tobacco ferments, or sweats, thereby eliminating certain acrid characteristics. Tobacco for domestic trade is usually transported to a point near the manufacturing plant of the owner and stored there. Foreign manufacturers have their own storage facilities abroad for aging tobacco. Accordingly exporters customarily do not store tobacco in the United States for any considerable length of time, but maintain a small reserve supply sufficient only to meet changes in the usual foreign demand. Such export tobacco as is stored in the United States is usually stored near the export center (R. 63, 64).

to control marketings they did perform valuable services in operating warehouses and redrying plants (R. 88). With marketing controlled this major cause for their failure has been eliminated.

D. OPERATION OF THE AUCTION MARKETS

The marketing season is fixed principally by the buyers and warehousemen (R. 61). The auction markets in Florida and Georgia open about the first of August and remain open for some 3 to 6 weeks. Markets in states farther north open later and continue open for a longer period, those in northern North Carolina and Virginia opening generally in September and continuing through the following February, with the greatest volume of sales in October or November (R. 61).

The auction warehouse method of selling tobacco in Georgia is practically unchanged since it was considered by this Court in *Townsend* v. *Yeomans*, 301 U. S. 441, 445, and is substantially similar to that followed in North Carolina, recently considered by this Court in *Currin* v. *Wallace*, No. 275, this term, decided January 30.

The growers after curing their tobacco sort it as best they can. In Florida and Georgia the leaves are not made into bundles or "hands", as is done in other areas, but are marketed loose. Growers usually transport the tobacco to the warehouse in private conveyances. The warehouse operator acts as agent for the seller and receives a fee for his

services (R. 60–61). At the warehouse the tobacco is placed in trays furnished by the warehouseman, and weighed under the supervision of warehouse employees; a ticket giving the name of the owner, and the number of pounds in the tray and providing space for the name of the buyer and the price paid is placed on each lot of tobacco. The warehouseman's employees then place the trays in rows with a passageway between the rows. No distinction is made between the tobacco produced in the state and tobacco produced in any other state, and tobacco which may be sold for transportation out of the state cannot be distinguished from any tobacco that may be destined for local manufacture (R. 60). The destination of the tobacco depends upon who buys it, and the buyer of any lot of tobacco cannot be foretold before the bidding is completed and the bid accepted (R. 60–62).

When the sale begins the auctioneer who conducts the sale, the warehouseman, and the warehouse employees proceed along one side of a row of trays and the buyers along the other side. Following the auctioneer on his side of the trays, usually 25 or 30 trays behind the sale, are calculators or "bookmen" who calculate the price a tray of tobacco brings, the amount due to the warehouseman, and the amount due to the grower (R. 60).

The sale proceeds with great rapidity. Lots of tobacco are sold as rapidly as 360 baskets per hour—one basket every 10 seconds. The sale is in constant motion. The auctioneer calls the bids and

offers so rapidly that his words can be understood only by the initiated. Bids are usually made by gestures known only to the auctioneer and the bidder. The warehouseman customarily makes the opening bid and sometimes acquires tobacco at the sale (R. 60).

When a sale is made a ticket marker places the buyer's name, the price, and the buyer's grade on the warehouse ticket. The bookmen following the sale make their calculations, described above, and unless the seller rejects the offer by folding the ticket on the tobacco and laying it back on the tray, the tobacco is promptly removed by the buyer from the warehouse floor,[22] commingled with other tobacco purchased by the buyer and shipped to whatever place the purchaser chooses for redrying, storage, and manufacture.[23] A grower who rejects the sale may, and usually does, subsequently reoffer his tobacco at the same or another warehouse. The warehouseman's employees calculate the gross value of each lot sold, and deduct the warehouseman's fee. The grower is paid the net proceeds and the warehousemen later collect the gross sale price from the buyer (R. 60, 61).

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[22] Tobacco bought by the warehouseman is not removed from the floor but usually is rearranged and put back in line for resale (R. 60).

[23] This must be done within a few minutes of the sale, and can only be done by a buyer present at the sale (R. 60).

E. INTERSTATE AND FOREIGN COMMERCE IN FLUE-CURED TOBACCO

A preponderant part of the flue-cured tobacco sold at auction warehouses is transported in interstate or foreign commerce promptly after sale. During the five-year period 1932–1936, an average of 55% of the flue-cured tobacco grown in the United States was exported (R. 64). At least two-thirds of the flue-cured tobacco sold at auction in the United States moves outside the state where it is first sold to be manufactured (R. 65).[34] The preponderantly interstate and foreign character of flue-cured tobacco sales at auction warehouses is most strikingly illustrated by the Georgia sales. Substantially all of the tobacco sold in Georgia is sold for shipment in interstate and foreign commerce. During the five-year period 1932–1936, Georgia marketings averaged almost 53 million pounds,

[34] Although the figure given for tobacco sold and shipped in interstate commerce is the most accurate available, it represents only a minimum, since it assumes that all tobacco manufactured in a state which grows tobacco was produced in that state (R. 65). It thus does not take account of interstate sales to factories in other tobacco growing states. That there are substantial quantities of tobacco so sold appears from the fact that many domestic manufacturers buy in Georgia and Florida, although their main factories are in North Carolina and Virginia (R. 61–62).

The figures on page 65 of the Record indicate that the statement on that page that approximately two-thirds of the flue-cured tobacco moves to other States refers to both interstate and foreign movements rather than to the interstate movement alone.

whereas an average of only 200 pounds per year was manufactured in Georgia. In other words, an amount less than four ten-thousandths of one per cent of the Georgia sales was manufactured in Georgia. All the rest was sold for manufacture outside the state. Although in other states in the flue-cured producing area the excess of the quantity sold over the quantity manufactured in the state is not as high as in Georgia, the tobacco manufactured in South Carolina and Florida is negligible, and that manufactured in North Carolina is less than 40 percent of the sales in the state. The poundage manufactured in Virginia is slightly less than 78 percent of the quantity sold in Virginia (R. 59, 65). (See note 24, *supra*, p. 28.)

The interstate character of the marketing of flue-cured tobacco is further emphasized by the fact that most of the tobacco is bought by a small number of buyers for use in factories scattered throughout the world (R. 61–62). In the United States tobacco is manufactured in nine hundred factories in forty-four States (R. 71). Since tobacco products are composed of blends of various domestic and foreign tobaccos, each of these factories receives tobacco from various States and countries (R. 64). The products of these factories are then distributed throughout the United States (R. 71). A large portion of the tobacco exported also moves in interstate commerce before shipment abroad, most of it clearing through Virginia ports and some from northern states (R. 67).

F. RELATIONSHIP BETWEEN INTERSTATE PRICES AND THE VOLUME SOLD AND SHIPPED IN INTERSTATE AND FOREIGN COMMERCE

The consumption of tobacco is relatively stable (R. 73). The amount marketed fluctuates widely from year to year (R. 73). There is a positive, readily apparent, interrelation between the amount marketed and the price received by growers (R. 73, 74, 78). Over a long period, before the Federal government gave assistance to growers in controlling the amount marketed, prices were consistently low when large crops came to market and relatively higher when crops were small relative to the demand (R. 73, 74, 78).

But equally significant is the fact that the quantity marketed in any year varied directly with the prices paid for the crop marketed the previous year. The prices paid for the crop in any year directly affected the amount which growers would market in succeeding years and, consequently, the price for which the buyers would be able to get tobacco in succeeding years (R. 73, 74). When prices were low in any year farmers brought to market in the succeeding year a smaller quantity of tobacco and the price in the succeeding year accordingly increased. Conversely, when the price had been high in any year farmers consistently brought to market greater amounts the next year

and had to sell them at lower prices.[25] Such increases in volume did not compensate, in terms of total income, for decreased prices (R. 82, 84).

These relationships result from the manner in which the tobacco industry is organized. About 300,000 families of growers produce and market the crop (R. 55, 74). Each grower conducts his production and marketing independently and in competition with other farmers growing the same class of tobacco (R. 74). They lack the detailed information available to the few buyers and have been unable, individually, to adapt their plans for production and marketing to meet requirements of the buyers (R. 74). Moreover, they have been unable to devise effective methods of coordinating their activities in either production or marketing so as to adjust the supply offered for sale to the effective demand.[26] Accordingly, influenced by individual hope of gain and by fear that, because they lacked effective methods of coordinated action, other growers would profit from prevail-

[25] With the exception of one year, 1922, when despite an increase of 1.3 per cent in supply over the previous year, the price did not decrease relative to the previous year but instead increased substantially. It is noteworthy, however, that despite the increase in the quantity marketed in 1922 the total supply in that year had fallen from 4 per cent over the reserve supply level in 1921 to 5 per cent below the reserve supply level (R. 78, 79).

[26] The private efforts of growers to adapt their marketings to market requirements have generally been unsuccessful (see pp. 24, 25, *supra*). Efforts of the states have also failed to meet the situation (R. 73, 90–92).

ing prices at their expense if they should attempt, as individuals, to limit their production or their marketing, they consistently planted and brought to market after each year of high prices, large crops which they found they could sell only at low prices, or part of which they could not sell at all (R. 73, 75, 79).[27]

When the actual supply exceeded the reserve supply level, prices to growers dropped especially low, and the purchasing power of the tobacco sold consistently fell below the parity price deemed by Congress to be a fair return to tobacco farmers (R. 75, 78). In such years of low prices the increase in the volume sold did not offset the low prices.

On the other hand, a few large buyers purchase substantially the entire crop by open competitive bidding at public auctions (R. 61, 62). They customarily have on hand large stocks of tobacco, adequate to meet their requirements for a considerable time,[28] even without their buying much of the crop

[27] The individual grower, even though it may mean a loss to him, usually sells all of his tobacco except that which will not bring a sufficient price to reimburse him for marketing charges and the cost of preparing it for market. Moreover, in some years buyers have refused to bid at all on large quantities of tobacco which ordinarily would have been marketed. Growers have customarily used such tobacco as fertilizer. This has been done widely in some years (R. 75), although production figures for tobacco, being based largely on marketing, fail to show the quantities thus withheld from market.

[28] In the case of the domestic manufacturers these stocks on hand when the markets open and before they acquire any

offered in any particular year. They are well informed before the markets open as to the quantity, not only of their own stocks but of those in the hands of manufacturers generally, and as to the size of the crop coming to market (R. 73). As marketing progresses they are able to keep informed as to the amounts being bought and the prices being paid by the other competing buyers. Moreover, they are fully aware of the fact that if any of the large buyers should bid the price to a high level in the current season, in the absence of effective control of marketing, growers will bring to market the next year a larger crop which buyers who have not overloaded their inventories at the high price can buy at lower prices. Any buyer of disproportionate quantities at high prices would be at a competitive disadvantage the succeeding year.

Each buyer was in a position as the marketing season progressed to hold down its bids and limit the quantity bought if it considered that prices were getting too high in view of prospective price and supply. Accordingly the amounts bought by each buyer and the prices paid were designed to prevent other large competitors from procuring an advantage through holding back on current pur-

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of the current crop normally amount to almost twice their annual requirements. The exporters retain smaller stocks adequate only to meet changes in foreign demand, but only because the foreign manufacturers to whom they sell have their own facilities for storing supplies abroad (R. 63, 64).

chases and replenishing their stocks at lower prices in the subsequent year. In this way the size of the crop which any particular level of current prices would bring to market the next year was a definite factor in determining the prices actually bid in the current year. See H. R. Report 1645, Appendix, p. 223, *infra*.

The reluctance of each buyer to acquire greater relative quantities of tobacco at higher prices than its competitors consistently depressed prices below the level which would have resulted from uninhibited bidding if the buyers had been unconcerned with these competitive hazards of bidding freely. Had growers been able to control the amounts they brought to market each year the markets would have been freed of this price-depressing factor. See H. R. Rep. 1645, Appendix, pp. 223, 224, *infra*. This is strikingly evident from the fact that after 1933, when buyers were reasonably assured that the crops brought to market would be held approximately in line with demand regardless of the prices paid, they raised prices by approximately 50 percent in the middle of the 1933 marketing season and have since continued to pay unprecedentedly high prices for relatively large crops (R. 53, 76–83).

Federal or state programs for assisting growers to regulate the quantity of tobacco marketed were in effect or in prospect each year from 1933 to 1938. For the three years 1935, 1936, and 1937, growers have sold, not small crops, but crops which have brought the total supply in each of those years well

above the reserve supply level (R. 79, 80). They have received for such crops not the low prices which they had been accustomed to receive for crops of that relative size, but prices generally as high as or higher than the prices previously received even in the few years when supplies were below the reserve supply level (R. 78–79). Without the prospect of governmental assistance which has been present every year since 1933, the certainty of excessive marketings in response to such prices would have resulted in much lower prices (R. 83).

Because the cost of tobacco is but a minor part of the cost of manufactured tobacco products (R. 73, 74, 84), and because manufacturers follow relatively fixed price policies there is little, if any, relationship between the prices received by farmers for their leaf tobacco and the prices paid by the consumer for manufactured tobacco products (R. 74; H. R. Report 1645, Appendix, pp. 223–224, *infra*). Thus, increases in prices and real income to farmers such as have resulted from effective control of the amount marketed do not serve to raise prices to the ultimate consumer (R. 74).

Depressed tobacco prices and severe annual fluctuations in prices and in the quantity marketed not only adversely affect the farmers who sell tobacco in interstate and foreign commerce but also result in severe disruption of such commerce itself. Notable instances of the latter were "the difficulties which culminated in the so-called night

eign sales of tobacco are minimized by the effective control of present and prospective marketings.

SUMMARY OF ARGUMENT

I. *The Commerce Clause.*—A. Most flue-cured tobacco is sold at auction markets for extrastate shipment. Such sales are interstate or foreign commerce and subject to Congressional regulation. The Agricultural Adjustment Act of 1938 regulates only *sales* of tobacco; it provides a mechanism for determining how much each grower may market, and "market" as used in the Act means "sell." To the extent that the Act is applied to interstate selling, it regulates interstate commerce itself, and clearly falls within the federal commerce power. (See pp. 45–54, *infra.*)

B. If the Act may validly be applied to sales of tobacco for interstate or foreign shipment, it may be applied also to sales to intrastate destinations. It is impossible physically to separate interstate and intrastate sales of tobacco. Often even after the sale has been completed the destination of the tobacco may not be known. All that is known is that in Georgia all but a minute quantity and in the nation over two-thirds of the total is being sold for immediate shipment in interstate and foreign commerce. Economically, as well as physically, interstate and intrastate sales of tobacco are intermingled. The quantity sold intrastate contributes to the total supply and affects the entire price structure as much as that which crosses state lines.

In view of this commingling of interstate and intrastate operations, the commerce power may be applied to the whole. (See pp. 54–59, *infra.*)

C. 1. (a) The Act does not regulate production. It authorizes the fixing of quotas for the amount to be sold, not the amount to be produced. In no way does it control the conduct of a grower prior to the marketing of his tobacco. That it was not intended to operate as a regulation of production appears from the fact that Congress contemplated that under certain conditions marketing quotas were to be established after the harvesting of the crop but before marketing. The purposes of the Act—stabilizing prices and marketings in commerce—are achieved by regulating the amount marketed rather than the amount grown. Moreover, a restriction upon marketing may not have the effect of limiting production. Tobacco (as well as the other crops for which quotas may be established under Title III) may be and customarily is stored for long periods of time. Growers acting cooperatively can readily arrange to have any tobacco produced in excess of marketing quotas kept for sale in years when no quotas are in effect or when quotas are not exceeded. (See pp. 59–67, *infra.*)

(b) Even if it were true that the fixing of marketing quotas necessarily affected production, it would not follow that production was being regulated. Marketing, production, and transportation are so interrelated that regulation of any one of them often will inevitably affect the others. And

yet this court has repeatedly recognized that such collateral effects do not determine the constitutionality of legislation. If that were not the case, many unquestionably valid statutes, such as the tariff, petroleum and liquor laws, and the Lottery, White Slave, and Kidnapping Acts, might have fallen by the wayside. (See pp. 67–73, *infra*.)

2. (a) In the same way the purpose of a regulation of interstate commerce cannot affect its validity. The Constitution nowhere provides that the power of Congress to regulate commerce may be exercised only for a commerce purpose. In the interstate field Congress may act for the public benefit just as may the States in the regulation of their internal commerce. From the earliest decisions and the *Commentaries* of Mr. Justice Story to the latest pronouncements of this Court, these principles have been recognized. (See pp. 73–85, *infra*.)

(b) Nevertheless, the Act would be valid even if the most orthodox commerce purpose were requisite. The objectives sought by Congress are the stabilizing of prices so as to prevent the unreasonably low prices to farmers and the disorderly marketing in commerce which results from surpluses in years of excessive yield and shortages in lean years. The prevention of such evils is much more closely related to the underlying objectives of the commerce clause than protection of the public against immorality, crime, and disease. Most important legislation enacted under the commerce

clause has had a similar objective—the promotion of the economic interest of particular classes of the public. This has been most frequently sought to be achieved through regulation designed to influence prices, such as the tariff, the Sherman Act, the Packers and Stockyards Act, the Grain Futures Act, and the Tobacco Inspection Act. The objective of the Agricultural Adjustment Act of 1938 is fundamentall ythe same. (See pp. 89–96, *infra*.)

3. Even though the Act be regarded as a direct regulation of the amount of tobacco produced, it would not for that reason fall without the commerce power. Congress may regulate intrastate transactions which directly affect interstate commerce, even though they are incidents of production. Here the quantity of tobacco produced has a most direct and substantial effect both upon interstate prices and the amount shipped in interstate commerce. Intrastate acts have frequently been held to fall within the commerce power because of their effect upon interstate supply and prices in interstate markets. (See pp. 96–109, *infra*.)

4. The cases relied upon by the appellants are not controlling in this case. *United States* v. *Butler*, 297 U. S. 1, held the provisions of the Agricultural Adjustment Act of 1933 involved in that case to be a regulation of production rather than an exercise of the power to tax and provide for the general welfare. Such provisions did not purport to regulate interstate and foreign commerce. The

present Act is concerned only with interstate marketing, and thus, does not regulate the subject found in the *Butler* case to be beyond the scope of federal power. Moreover, even if it were a regulation of production it would, nevertheless, come within the commerce power because of the direct effect of the activity regulated upon interstate and foreign commerce. (See pp. 109–111, *infra*.)

Hammer v. *Dagenhart*, 247 U. S. 251, is also distinguishable. But the reasons advanced by the majority in that case are inconsistent with subsequent decisions of this Court. We believe that the principles which governed the decision in that case have been abandoned by this Court and that the case is no longer an authority. (See pp. 112–118, *infra*.)

II. *The Tenth Amendment.*—Since the marketing quota provisions of the Act are an exercise of the power of Congress to regulate interstate and foreign commerce, they cannot violate the Tenth Amendment. That Amendment provides only that "the powers not delegated to the United States * * * are reserved to the States." Language could not indicate more plainly that the Amendment does not limit the powers which are delegated to the United States. The history of the adoption of the Amendment, the statements of early judges and commentators and numerous decisions of this Court demonstrate that the Amendment means only what it says. We do not believe that implications in a few relatively re-

cent opinions can be said to have discarded *sub silentio* such a basic constitutional doctrine. (See pp. 120–138, *infra*.)

III. *The Due Process Clause.*—A. Appellants contend that the Act is invalid for indefiniteness because farmers cannot tell from the statute itself what their quotas are to be. Inasmuch as the Act does not penalize farmers for marketing tobacco in violation of the general statutory standards, but only for marketing quantities in excess of specific quotas administratively determined under such standards, this objection is untenable. (See pp. 138–141, *infra*.)

B. Appellants contend that the establishment of quotas for 1938 was retroactive and violated due process of law because the 1938 crop was planted, grown, and harvested before the allotments to individual farms were made. But the Act imposes penalties only for excessive amounts marketed after individual quotas are prescribed, not for the amount produced before that time. Thus it does not operate retroactively. The fact that appellants may have expended considerable sums in raising their crop before the marketing quotas were fixed (although after they were aware that quotas were likely to be established) is not material. Many decisions have held that statutes operating prospectively are not invalidated because of losses which may result from expenses previously incurred. (See pp. 141–152, *infra*.)

C. The ends which Congress was seeking to attain in the Act were the maintenance of a balanced

supply of farm products marketed in interstate and foreign commerce and the protection of farmers against unreasonably low prices. These ends are legitimate under the commerce clause, and the provisions of the Act are reasonably adapted to achieve them. Accordingly, the statute satisfies the requirements of due process of law. The plight of American agriculture because of decreased exports, the accumulation of surpluses, and the resultant low prices has presented a serious national problem since the 1920's. The present Act reasonably seeks to meet this situation by keeping unwieldy surpluses off the market. In the absence of affirmative disproof the finding by Congress that the means adopted are reasonable and appropriate must be accepted by the Court. Here the record confirms the legislative judgment. (See pp. 152–160, *infra*.)

IV. *Delegation of Power.*—The provisions of the Act which determine when a national marketing quota is to be established, what the amount of the quota is to be, and how it is to be apportioned among the States, merely require the Secretary to make findings of fact from official statistics (subject to minor adjustments). Section 312 (a), 313 (a). In the main these determinations are purely mathematical. The narrow and well-defined latitude permitted to administrative discretion in making definitely prescribed adjustments is plainly unobjectionable. (See pp. 160–166, *infra*.)

The Act carefully enumerates the specific factors to be considered in apportioning the state quotas to

individual farms. Section 313 (b). Although the administrative officials are called upon to exercise judgment in determining how much weight shall be given to each factor, Congress has definitely established an intelligible policy and prescribed adequate standards to guide administrative discretion. In many prior cases this Court has upheld statutes containing delegations of authority far more sweeping and less circumscribed than any in the case at bar. (See pp. 166–175, *infra.*)

ARGUMENT

I

THE MARKETING QUOTA PROVISIONS OF THE AGRICULTURAL ADJUSTMENT ACT ARE VALID REGULATIONS OF INTERSTATE AND FOREIGN COMMERCE

A. THE MARKETING QUOTA PROVISIONS ARE REGULATIONS OF INTERSTATE AND FOREIGN COMMERCE

The question of federal power in this case is fundamentally the same and just as simple as that before this Court in *Currin* v. *Wallace,* No. 275. The master facts, the same in both cases, may be briefly summarized. Most tobacco is sold at auction warehouse markets (R. 56). Substantial quantities of the tobacco brought to the warehouses comes from outside the state (R. 57–58).[*] At least

[*] That is true as to some of the appellants, whose farms are in Florida, but not as to those appellants whose farms are in Georgia (R. 44). In *Currin* v. *Wallace* approximately 15 per cent of the tobacco sold on the Oxford, North Carolina, market came from Virginia. The amount coming to a market from outside the state probably varies with the distance of the market from a state line.

two-thirds [30] of all flue-cured tobacco sold at auction warehouses is sold for immediate shipment to an interstate or foreign destination, 55 percent being exported (R. 64–65). In Georgia 99.9996 percent of the flue-cured tobacco so sold—52,807,600 out of 52,807,800 pounds—is purchased by extra-state purchasers (R. 59).

In markets where tobacco is sold to both interstate and intrastate purchasers, no one can know when the grower places his tobacco on the warehouse floor for sale whether it is destined for interstate or intrastate commerce (R. 60). Thus, any regulation of the sale of tobacco for interstate commerce must apply also to sales in intrastate commerce if it is to be effective.

As this Court declared in the *Currin* case, sales of tobacco by growers through warehousemen [31] to purchasers taking the tobacco outside the state *are* interstate commerce. The word "commerce" does not refer merely to transportation; its primary connotation at the time the Constitution was adopted and thereafter was "exchange of goods." [32]

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[30] See note 24, p. 28, *supra*.

[31] The same would be true of any sales by growers, on the farm or elsewhere, to purchasers for interstate shipment. *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282; *Flanagan* v. *Federal Coal Co.*, 267 U. S. 222.

[32] In his concurring opinion in *Gibbons* v. *Ogden*, 9 Wheat. 1, 229–230, Mr. Justice Johnson defined the word "commerce" as follows:

"Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor,

This Court has pointed out repeatedly that interstate commerce consists of buying and selling as well as of transportation. "Such commerce is not confined to transportation from one State to another, * * *. Where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation." *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 290. *Currin* v. *Wallace, supra*. *Shafer* v. *Farmers Grain Co.*,

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transportation, intelligence, care and various mediums of exchange, become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation."

The opinion of Chief Justice Marshall, in the same case, indicates that counsel for appellee admitted that "commerce" included "buying and selling or the interchange of commodities" but denied that it comprehended navigation. To this argument he replied (9 Wheat., at 189):

"This would restrict a general term, applicable to many objects, to one of its significations."

The *American Encyclopedia*, published in 1798, contained the following definition: "Commerce—is an operation by which the wealth or work either of individuals or of society may be exchanged by a set of men called merchants for an equivalent * * *." *Webster's Dictionary*, as late as 1841, contained the following definition: "Commerce—in a general sense, an interchange or mutual change of goods, wares, productions, or property of any kind by the nations or individuals, either by barter, or by purchase and sale; trade, traffick." See also *Webster's Dictionary* (1st ed. 1806); *Samuel Johnson's Dictionary* (6th ed. 1785); *Perry's Royal Standard Dictionary* (4th Am. ed. 1796); *Alexander's Columbia Dictionary* (1800).

268 U. S. 189, 198. In his dissenting opinion[25] in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 326, Mr. Justice Cardozo declared with respect to sales of coal by mine operators, f. o. b. mine, for interstate shipment "that sales made under such conditions constitute interstate commerce, and do not merely 'affect' it." See also, the opinion of the Chief Justice in the *Carter* case at page 320; and *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Swift & Co.* v. *United States*, 196 U. S. 375, 398; *Flanagan* v. *Federal Coal Co.*, 267 U. S. 222, 225; *Stafford* v. *Wallace*, 258 U. S. 495, 519; *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1, 10; *Globe Elevator Co.* v. *Andrew*, 144 Fed. 871; *Krueger* v. *Acme Fruit Co.*, 75 F. (2d) 67, 68 (C. C. A. 5th).

"So far as the sales are for shipment to other States or to foreign countries, it is idle to contend that they are not sales in interstate or foreign commerce and subject to congressional regulation." *Currin* v. *Wallace, supra.* State power to regulate them has been denied only because of the existence of the superior federal power. In *Lemke* v. *Farmers Grain Co., supra,* which dealt with sales of grain by farmers to buyers transporting it to terminal markets in other states—a method of doing business

[25] The references in this brief to the dissenting opinions of the Chief Justice and of Mr. Justice Cardozo in the *Carter* case will (unless otherwise noted) be to those portions of the opinions upholding the power of Congress to fix prices, a question upon which the majority of the Court did not find it necessary to pass.

strikingly similar to that here under consideration—the Court held that the states were powerless to regulate such sales because the power to control them was vested in the Congress. The Court stated (258 U. S., at 60–61):

> It is alleged that such legislation is in the interest of the grain growers and essential to protect them from fraudulent purchases, and to secure payment to them of fair prices for the grain actually sold. This may be true, but Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed. The supposed inconveniences and wrongs are not to be redressed by sustaining the constitutionality of laws which clearly encroach upon the field of interstate commerce placed by the Constitution under federal control.

The principles applied by these decisions to sales of grain at country elevators for interstate shipment are clearly applicable as well to sales of tobacco at the warehouses for interstate shipment. *Currin v. Wallace, supra.* Thus, the sale of tobacco at the warehouse when the buyer immediately thereafter transports the tobacco out of the State is itself interstate or foreign commerce and subject to Federal regulation.

The tobacco marketing quota provisions of the Agricultural Adjustment Act of 1938 regulate only *sales* of tobacco. The Act prescribes a mechanism by which the amount to be *marketed* by each grower

rider activity in the tobacco areas of Kentucky and Tennessee; the wide-spread closing of tobacco markets for varying periods of time, which followed the drastic decline of tobacco prices after the World War; and the similar closing of auction markets because of low prices during the early part of the 1933 tobacco marketing season" (H. R. Report 1645, Appendix, p. 227). The most acute disturbance of commerce in tobacco was that which occurred in 1933.

Between 1927 and 1933 excessive supplies accumulated and prices declined progressively. When the 1933 marketing season opened, prices were even lower than in 1932 (R. 78). Protests from the growers first arose in Georgia, where the markets first opened, "and then spread to South Carolina and North Carolina. Appeals were made to the Agricultural Adjustment Administration for relief. Mass meetings of growers were held throughout the flue-cured tobacco belt and, pending some action by the Federal Government, the auction markets in South Carolina and North Carolina were closed by official action of the respective governors of these two states. The marketing in Georgia had been completed and selling in Virginia had not yet commenced, so that the flue-cured tobacco industry was at a complete standstill. Conferences were held among the growers, the buyers, and officials of the Agricultural Adjustment Administration in Washington, D. C., and elsewhere.

There was an insistent demand that immediate action be taken by the Federal Government to save the remainder of the 1933 flue-cured tobacco crop from being sacrificed at the prices prevailing at the time of the closing of the markets. As a result, a marketing agreement was entered into between the principal buyers of flue-cured tobacco and the Secretary of Agriculture pursuant to the provisions of Section 8 (a) of the Agricultural Adjustment Act of 1933 * * *" (R. 73).

This agreement raised the prices from a level lower than the average price of 11.6 cents (received for the 1932 crop) to a minimum of 17 cents (R. 78). During the period since 1933 "prices were influenced by the operation and prospective operation of governmental programs regulating the production or marketing of tobacco" (R. 78). They have since remained at levels favorable to the growers and no further similar disruptions in commerce in tobacco have occurred.

The previous federal programs sought to assist farmers through adjustment of the quantity produced. This Act seeks to aid them by limiting merely the amount offered for sale, irrespective of what the production may have been or may be, and does this only in years when the supply exceeds the reserve supply level. It is apparent from the facts summarized above that the influences which have disrupted the marketing of tobacco and depressed prices in interstate and for-

> in itself, a limitation. Power to regulate, it is said, cannot be understood to give a power to annihilate. To this it may be replied, that the acts under consideration, though of very ample extent, do not operate as a prohibition of all foreign commerce. It will be admitted that partial prohibitions are authorized by the expression; and how shall the degree, or extent, of the prohibition be adjusted, but by the discretion of the national government, to whom the subject appears to be committed?

Allotments of the amount of a commodity which a person may ship in interstate commerce have been upheld with respect to petroleum (*Griswold* v. *The President of the United States*, 82 F. (2d) 922 (C. C. A. 5th))[38] and coal (*Assigned Car Cases*, 274 U. S. 564; *Avent* v. *United States*, 266 U. S. 127).[39] The lower federal courts have with one exception [40] upheld the validity of marketing quotas established for fruits and vegetables under the

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[38] The Connally "Hot Oil" Act (49 Stat. 30, U. S. C. Title 15, § 715) prohibits the shipment in interstate and foreign commerce of oil produced in excess of that allowed by state law. No one has seen fit to carry the question of the constitutionality of the Act to this Court.

[39] The allotment of railroad cars to coal mines in time of car shortage was in substance a determination of the amount of coal each mine could ship in commerce.

[40] The only unreversed District Court case holding such orders invalid is *Chester C. Fosgate Co.* v. *Kirkland*, 19 F. Supp. 152 (S. D. Fla.), which in effect has been overruled by the decision of the Circuit Court of Appeals for the Fifth Circuit in *Whittenburg* v. *United States*, 100 F. (2d) 520.

Agricultural Adjustment Act of 1933 (48 Stat. 31), as amended in 1935 (49 Stat. 750), and later reenacted as the Agriculture Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. § 601). *Edwards* v. *United States*, 91 F. (2d) 767 (C. C. A. 9th); *Wallace* v. *Hudson-Duncan & Co.*, 98 F. (2d) 985 (C. C. A. 9th); *Whittenburg* v. *United States*, 100 F. (2d) 520 (C. C. A. 5th); *United States* v. *Goldsmith Fruit Co.*, 19 F. Supp. 147 (S. D. Fla.). Cf. *United States* v. *David Buttrick Co.*, 91 F. (2d) 66 (C. C. A. 1st), certiorari denied 302 U. S. 737; *United States* v. *Whiting Milk Co.*, 21 F. Supp. 321 (D. Mass.).[41] In numerous antitrust cases this Court has recognized that the supply of a commodity in interstate commerce was a proper concern of Congress under the commerce power. *Standard Oil Co.* v. *United States*, 221 U. S. 1; *Standard Oil Co.* v. *United States*, 283 U. S. 163, 169.

For these reasons we believe that the statement that the commerce question in this case is fundamentally a simple one is amply justified. The Agri-

[41] In the following unreported cases district courts have granted temporary restraining orders or preliminary injunctions enforcing orders of the Secretary of Agriculture of the kind referred to: *United States* v. *Babcock Dairy Co. et al.* (N. D. Ohio); *United States* v. *Herman M. Sheffield et al.* (S. D. Texas); *United States* v. *Melvin Child Andrews et al.* (D. Mass.). See also *United States* v. *Corinth Creamery, Inc.*, 21 F. Supp. 265 (D. Vt.).

cultural Adjustment Act of 1938 in establishing marketing quotas, does no more than limit the amount which may be sold and shipped in commerce. The commerce so regulated is substantially all interstate or foreign commerce. Accordingly, the Act is a regulation of interstate and foreign commerce.

B. THE ACT IS VALID AS APPLIED TO INTRASTATE SALES OF TOBACCO

If the Agricultural Adjustment Act of 1938 may validly be applied to sales of tobacco for interstate shipment, it may be applied also to sales to intrastate destinations. This must necessarily be the case when interstate and intrastate transactions are both physically and economically inseparable, as they are here. The question here, too, is the same as that before the Court in *Currin* v. *Wallace, supra.*

A brief description of the course of trade will demonstrate that commerce in tobacco is not susceptible of division into interstate and intrastate fractions. Most tobacco, as has been indicated, *supra,* p. 23, and all of that involved in this case, is sold on auction markets. Tobacco comes to many of these markets, including the Valdosta market, from growers outside as well as from growers within the state in which the market is located (See p. 45, *supra*). At each market representatives of the buyers compete with each other for the various lots sold (R. 60). Although most of the buyers pur-

chase for interstate shipment, some may purchase for shipment to factories within the state (R. 65). Most purchases are made by representatives of a few major companies, some of which have factories in several states (R. 61, 62). Such purchasers may buy both for interstate and intrastate shipment. Since tobacco products are generally composed of blends of various types of tobacco, both foreign and domestic (R. 64), factories located in producing states necessarily receive large quantities of tobacco from outside sources. Most of that portion of the tobacco crop which is processed in factories within the state in which it is grown ultimately moves into interstate commerce, since the products of these factories are distributed generally throughout the United States.[42] (R. 71).

The commerce thus described does not admit of physical division into separate interstate and intrastate streams. The regulation here in question takes effect at the time of marketing, which in the vast majority of instances means at the time of sale on the warehouse floor. When the tobacco is offered for sale and while the auction is proceeding, no one can tell which tobacco is destined for interstate and which for intrastate shipment. (R. 60-61). Insofar as purchases by the large buyers,

[42] The processing consists in the main of drying, shredding, and blending. The tobacco remains tobacco; it is not changed into a substantially different product as are the raw materials going into manufacturing plants in other industries.

who take a major proportion of the total crop (R. 62), are concerned, even after the sale is completed and the identity of the purchaser determinable the destination of the tobacco may not be known (R. 61). All that is known is that in Georgia all but a minute quantity and in the nation over two-thirds of the total is being sold for immediate shipment in interstate and foreign commerce, and that most of the remainder will eventually move in such commerce. (See pp. 45–46, *supra.*)

Economically as well as physically intrastate and interstate sales of tobacco are inextricably intermingled. This fact also makes control of intrastate marketing essential in view of the fact that the Act is designed to insure orderly marketing and a fair and stable price (see pages 86–87, *infra*). The quantity sold intrastate contributes to the total supply and affects the entire price structure as much as that which crosses state lines. An excess amount purchased intrastate and there stored will decrease both the price and the demand for new-grown tobacco in subsequent years just as much as if it were purchased in interstate commerce, and will thus contribute to the disorderly marketing in such commerce which the statute was designed to avert.

What is not segregated in fact need not be segregated in law. The Constitution does not require separation of the inseparable. Marketing transactions relating alike to the interstate and intrastate movement of commodities may be regulated

as to all when the small intrastate part is commingled with the dominant interstate part. *Currin* v. *Wallace, supra. The Shreveport Case,* 234 U. S. 342; *The Minnesota Rate Cases,* 230 U. S. 352; *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R. Co.,* 257 U. S. 563; *Virginian Ry. Co.* v. *System Federation No. 40,* 84 F. (2d) 641, 647–651, affirmed, 300 U. S. 515. Cf. *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board,* 303 U. S. 453."

In the *Currin* case this Court applied these principles to sales on the tobacco markets, saying:

> The fact that intrastate and interstate transactions are commingled on the tobacco market does not frustrate or restrict the congressional power to protect and control what is committed to its own care. * * * Here, the transactions on the tobacco market were conducted indiscriminately at virtually the same time, and in a manner which made it necessary, if the congressional rule were to be applied, to make it govern all the tobacco thus offered for sale.

These principles are most appropriately applied to the regulation of marketing in an industry

"The "commingling of interstate and intrastate operations" (*The Minnesota Rate Cases,* 230 U. S., at 399) referred to in the above cases may be economic as well as physical. In the railroad rate cases it was the competitive interrelationship which caused the Court to regard interstate and intrastate rates as commingled. See *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 328–329 (dissenting opinion of Mr. Justice Cardozo).

which, in the language of the statute (Section 311 (a)) has "ramifying activities which directly affect interstate and foreign commerce at every point." Even if the marketing of tobacco by the growers were not itself in the interstate stream, it would be so close to interstate commerce as to subject it to federal regulation as an intrinsic part of the nation-wide current of commerce in tobacco. What has been said in upholding the regulation of *intrastate* transactions on the stockyards and futures markets may also be said as to the tobacco auction markets. Cf. *Stafford* v. *Wallace*, 258 U. S. 495, 515–519; *Swift & Co.* v. *United States*, 196 U. S. 375, 398; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 34. The language of this Court in *Stafford* v. *Wallace* is peculiarly appropriate here (pp. 518–519):

> The application of the commerce clause of the Constitution in the Swift Case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the states and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation

by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.

C. THE MARKETING QUOTA PROVISIONS OF THE ACT ARE NOT INVALID AS A REGULATION OF PRODUCTION

Appellants seek to evade the force of the decisions cited above demonstrating that the Act is a valid regulation of interstate commerce by the contention that it is really a regulation of production rather than commerce. For that reason they assert that it is not within the commerce power and in addition that it violates the Tenth Amendment. It is argued that the purpose and necessary effect of the Act are to control the production of tobacco on the farm, and that a regulation of that kind is beyond the power of Congress. To this we make answer:

(1) That the Act is not a regulation of production and the fact that it may affect production does not render it unconstitutional (pp. 60–73, *infra*).

(2) That the purpose of a regulation of commerce is immaterial, but that if purpose be relevant, this Act has a valid commerce purpose (pp. 73–96, *infra*).

(3) That even if the Act were to be regarded as a regulation of production, it is nonetheless valid in view of the direct effect of the transactions regulated upon interstate commerce (pp. 96–109, *infra*).

(4) That *United States* v. *Butler*, *Hammer* v. *Dagenhart*, and other cases cited by appellants are not controlling (pp. 109–118, *infra*).

We shall furthermore demonstrate in Point II, *infra*, pages 120–138, that the Tenth Amendment has no independent application, since it merely reserves to the states the power not delegated to Congress.

1. *The Act is not a regulation of production and the fact that it may affect production does not render it unconstitutional*

(a) THE ACT IS NOT A REGULATION OF PRODUCTION

The Act regulates marketing, not production. It authorizes the setting of quotas for the amount to be marketed or sold, not the amount to be produced. It imposes no penalties on a grower because of the amount he produces nor does it attempt to control any of his conduct prior to the act of marketing.

If the fact that the Act does not regulate production were not enough to demonstrate that it is not a regulation of production, consideration of other pertinent provisions of the Act, of its purposes and objectives, and of the manner in which it operates would lead to the same conclusion.

(1) Internal evidence in the statute of intention to regulate marketing rather than production may be found in the fact that Congress contemplated that some tobacco marketing quotas might become effective after the planting and growth of the crop. This appears plainly from Section 312 (b), which

provides with respect to burley and fire-cured and dark air-cured tobacco that, if the total supply exceeds the reserve supply level by more than five per cent, a national marketing quota shall become effective for the period from the date of the Secretary's proclamation to the end of the marketing year *then current* as well as for the succeeding marketing year. The marketing year for burley, and for fire-cured and dark air-cured tobacco runs from October 1 to September 30 (Sec. 301 (b) (7)). The year's crop is harvested by September, but the markets do not open until around December 1. The Secretary's proclamation is to be made by December 1 (Sec. 312 (a)) . Since these quotas provided for by Section 312 (b) apply to tobacco harvested more than two months before they become effective they could not possibly have been intended to limit production.

The quotas for flue-cured tobacco for the marketing year 1938–1939 present a similar situation. The Act was approved February 16, 1938. Under Section 312 (d) the Secretary was required to proclaim the amount of the national marketing quota for the year 1938–1939 within fifteen days and the result of the farmers' referendum within forty-five days of the enactment of the statute. The establishment of State and farm quotas provided for in Section 313 was to take place after the holding of the referendum, and obviously would take considerable time. Flue-cured tobacco is planted

in seedbeds between December and March, transplanted in April, May, and early June, and harvested in the more southerly producing states in June and early July (R. 50–51). Marketing in these states begins in late July or early August (*ibid.*). It is apparent from these facts that Congress must have realized that the quota provisions for flue-cured tobacco for 1938 would become operative in time to control the amount marketed but not in time to control the amount produced.

(3) The Act is designed to raise or stabilize prices. It achieves that result by controlling the amount marketed rather than the amount grown. With demand relatively constant, the price of tobacco is determined by supply—present and prospective (see pp. 30–37, *supra*, and pp. 100–103, *infra*). But the supply that primarily affects the price is that which may be marketed, not that which is grown but immobilized. Thus, in providing for the establishment of quotas limiting marketing alone regardless of production Congress went as far as was necessary for the accomplishment of the desired ends.

The purpose of stabilizing commerce through providing an orderly, adequate, and balanced flow of commodities in lean years as well as in good is likewise accomplished by controlling marketing rather than production. Natural factors—drought, flood, soil conditions—as well as the amount planted and the care taken of the crop de-

termine the amount produced in each year.* An even flow of commerce at reasonable prices can be achieved without regulating production by keeping surpluses in fat years from being marketed until years of shortage. This is what the Act contemplates, not limitation of production. The report of the Committee on Agriculture of the House of Representatives (H. R. Rep. 1645, 75th Cong., 2nd Sess.) makes this clear. It states that legislation to meet the farm problem (Appendix, pp. 206–207): "should not be posited on an economy of scarcity. Nor should such legislation be designed to meet a temporary emergency. It should, on the contrary, encourage the abundant production of agricultural commodities, and provide for the storage or warehousing of the production above current needs in order to have such commodities available at reasonable prices in years of drought or other adverse conditions. Such legislation should, by means of loans, assist farmers to cooperate with government in reaching this desirable objective." The report proceeds to state that "loans on agricultural commodities" are provided "in order to enable farmers to finance the storage and warehousing of commodities in years of excessive yields so that surpluses may be kept off the market, and so that in years of drought or other adverse conditions, supplies of agricultural commodities will be plenti-

* At the time of planting a farmer cannot tell precisely how many pounds of tobacco will be grown. This will vary with the weather and other natural factors.

is to be determined. The term "market" is defined in the Act to mean "to dispose of by sale, barter, or exchange." Section 301 (b) (6) (A).[34]

Tobacco is not commonly bartered or exchanged except for money and there is no suggestion that appellants do not market their tobacco by selling it.

The provisions of the Act authorizing the Secretary of Agriculture to establish marketing quotas for each farm thus mean only that he may establish sales quotas, that he may determine the amount which each grower may sell. To the extent that this determination relates to interstate selling—and substantially all appellants' sales are interstate (see pp. 28–29, *supra*)—it regulates the amount of tobacco which can be sold in interstate commerce. Such a regulation is unquestionably a regulation of commerce among the states. It is not even subject to the attack made on the Tobacco Inspection Act that the inspection there called for preceded interstate commerce and was for that reason beyond the federal power. A regulation of the amount sold regulates nothing that precedes or fol-

[34] Section 301 (b) (6) contains *inter alia* the following definitions:

"(A) 'Market,' in the case of cotton, wheat, and tobacco means to dispose of by sale, barter, or exchange, but, in the case of wheat, does not include disposing of wheat as premium to the Federal Crop Insurance Corporation under Title V.

"(D) 'Marketed,' 'Marketing,' and 'for market' shall have corresponding meanings to the term 'market' in the connection in which they are used."

lows interstate commerce; it regulates only such commerce itself."

That a regulation of the quantity of interstate commerce is a regulation of such commerce would seem to be plain upon its face. Absolute prohibitions of shipments of particular commodities have frequently been upheld. See *United States* v. *Carolene Products Co.*, 304 U. S. 144, 147, and cases cited therein. If such complete prohibitions are commerce regulations, a partial prohibition—which is what the quota system amounts to—must also be within the commerce power. This was conceded in *United States* v. *The Brigantine William*, Fed. Cas. No. 16,700, 28 Fed. Cas. 614 (1808), perhaps the earliest reported case under the commerce clause, where the embargo on foreign commerce was upheld as constitutional.[36] Judge Davis[37] declared (at page 621):

> * * * Stress has been laid, in the argument, on the word "regulate", as implying,

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[35] That the regulation is, under familiar doctrine, valid as to intrastate sales, if valid as to interstate, is shown below, *infra*, p. 54.

[36] The Supreme Court approved this decision (although without referring to it by name) in *Gibbons* v. *Ogden*, 9 Wheat. 1, at 192–193.

[37] Judge Davis stated that he was giving his impressions "coeval, in mind, with the constitution" (p. 623). Judge Davis was the youngest member of the Massachusetts convention called to ratify the Constitution. *National Cyclopedia of American Biography*, Vol. XXII, p. 349; *Dictionary of American Biography*, Vol. V, p. 132. The case is discussed in Warren, *The Supreme Court in United States History*, Vol. I, pp. 341–350.

(4) The fact that the quotas to be allotted to states and individual growers are apportioned on the basis of factors relating primarily to the amount which can be produced does not mean that the statute is a regulation of production.[46] Some fair formula had to be devised which would give each state and grower an equitable share of the allotment to be marketed. The formula adopted should conform as closely as possible to the marketing ability of the state or grower. Plainly, factors showing the amount which could be and had been produced on the farm are the fairest and best indicia of its marketing ability. Acceptance of the argument that the use of such a standard for marketing quotas makes such quotas invalid would result in the absence of any feasible and reasonable basis for the establishment of this method of regulating interstate marketing under the commerce power.[47]

A striking similarity may be noted between the basis for fixing farm marketing quotas set forth in Section 313 (b) of the Agricultural Adjustment

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[46] Tobacco quotas for individual farms are to be based first on past marketings, not past production (Sec. 313 (b)).

[47] The numerous cases holding that taxes on subjects within the power of the taxing authorities may be *measured* by matters not within that power are analogous. Cf. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Pacific Co.* v. *Johnson*, 285 U. S. 480; *Home Ins. Co.* v. *New York*, 134 U. S. 594; *Van Allen* v. *Assessors*, 3 Wall. 573; *Peoples National Bank* v. *Board of Equalization*, 260 U. S. 702; *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103; *Manhattan Company* v. *Blake*, 148 U. S. 412; *Educational Films Corp.* v. *Ward*, 282 U. S. 379.

Act of 1938 and the rule adopted by the Interstate Commerce Commission under the Transportation Act of 1920 for the establishment of base ratings for mines as a basis for the allotment of coal cars to the various mines. After an extensive investigation culminating in its decision in *In Re Rules Governing Ratings of Coal Mines,* 95 I. C. C. 309, the Commission determined that it should be the duty of the agencies rating the respective mines to take into consideration the following basic principles: "(a) physical conditions, (b) past performance, (c) labor supply, (d) other factors that may affect the production and shipment of coal" (95 I. C. C., at 323). These factors to be used in determining how much coal may be transported from each mine all relate primarily to the capacity of the mine to produce coal—just as some of the factors used in determining how much tobacco may be marketed from each farm relate to the producing capacity of the farm. Yet in the one case no more than in the other can it be said that consideration of such factors converts the regulation of transportation or marketing into one of production. See *Assigned Car Cases,* 274 U. S. 564, 575.

(b) THE FACT THAT THE REGULATION OF MARKETING QUOTAS MAY AFFECT PRODUCTION DOES NOT MAKE THE ACT A REGULATION OF PRODUCTION

It may be that the fixing of marketing quotas would in some years tend to reduce the amount produced as well as the amount marketed. Some farmers may

decrease the quantity they grow rather than produce intentionally in excess of quotas for storage and later sale. But the fact that a regulation of marketing may have such a collateral effect upon production does not make it a regulation of production. Congress has power to regulate interstate commerce. If a law regulates such commerce, it is within the power of Congress, regardless of what effect upon other matters it may have.

If the test of constitutionality were the existence of such collateral effects, many unquestionably valid laws would fall by the wayside. Distribution or marketing, transportation, and production are so interrelated that regulation of any one of them may, and often inevitably will, affect the others. Thus, if any one of these activities be prohibited with respect to any commodity, the others may instantaneously be interrupted. If transportation rates from a particular region are raised unduly, the amount produced and distributed from that region may well decrease. Cf. *Anchor Coal Co.* v. *United States,* 25 F. (2d) 462,[49] describing the Lake Cargo coal controversy. Destruction of a monopoly in distribution may inevitably break up a monopoly in manufacture as well. Cf. *Standard Oil Co.* v. *United States,* 221 U. S. 1.

[49] Reversed on grounds of mootness, 279 U. S. 812.

A state may prorate the *production* of oil without conflict with the commerce power, although the necessary and inevitable effect of the limitation of production upon the amount of oil shipped in interstate commerce cannot be gainsaid. *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210. Conversely, Congress may limit the amount of oil distributed in interstate commerce, with an equally inevitable effect upon production, without thereby invading the field of state sovereignty. *Griswold* v. *The President of the United States,* 82 F. (2d) 922. A state may prohibit the manufacture of liquor and thus completely shut off the flow of interstate commerce in that commodity from within its borders. *Kidd* v. *Pearson,* 128 U. S. 1. Congress, on the other hand, by prohibiting the shipment of intoxicating liquor or of prison-made goods to states whose laws prohibit their manufacture and sale inevitably discourages and restricts manufacture. Cf. *Clark Distilling Co.* v. *West'n Md. Ry. Co.,* 242 U. S. 311; *United States* v. *Hill,* 248 U. S. 420; *Kentucky Whip and Collar* v. *Illinois Central Railroad,* 299 U. S. 344.

The protective tariff directly (and designedly) affects the amount of goods manufactured domestically; yet it is not a regulation of manufacture. The lottery act directly (and designedly) discourages lotteries. The Federal Kidnaping Act, it is sincerely to be hoped, discourages not only the interstate transportation of kidnaped persons but

kidnaping itself—although kidnaping *per se* is no concern of the federal government. "Such regulation is not a forbidden invasion of state power *either because its motive or its consequence* is to restrict the use of articles of commerce within the states of destination, and is not prohibited unless by the due process clause of the Fifth Amendment. And it is no objection to the exertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states." *U. S.* v. *Carolene Products Co.*, 304 U. S. 144, 147; *Currin* v. *Wallace, supra.*

As the majority of the Court (and *a fortiori* the minority) recognized in *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 371, in treating an argument similar to that made by appellants here:

> The collateral fact that such a law may produce contentment among employees,—an object which as a separate and independent matter is wholly beyond the power of Congress,—would not, of course, render the legislation unconstitutional.

The argument that an exercise of federal power may be invalid because of its regulatory or deterrent effect outside the sphere of federal regulation has repeatedly been rejected in cases involving the validity of taxes which were obviously designed to discourage the activity taxed. See particularly,

Veazie Bank v. *Fenno*, 8 Wall 533, 548;[50] *McCray* v. *United States*, 195, U. S. 27, 60;[51] *Sonzinsky* v. *United States*, 300 U. S. 506. Cf. *Magnano* v. *Hamilton*, 292 U. S. 40. In the *Sonzinsky* case, *supra*, this Court reviewed the authorities and laid down the principles which are applicable to the commerce power as well as to the taxing power. The Court said (300 U. S., at 513–514):

> * * * we are asked to say that the tax, by virtue of its deterrent effect on the activities taxed, operates as a regulation which is beyond the congressional power.
>
> Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed. But a tax is not any the less a tax because it has a regulatory effect, *United States* v. *Doremus*, *supra*, 93, 94; *Nigro* v. *United States*, 276 U. S. 332, 353, 354; *License Tax Cases*, *supra*; see *Child Labor Tax Case*, *supra*, 38; and it has long been established that an Act of Congress which on its face purports to be an ex-

[50] "Fifty years ago a tax on state banks, the obvious purpose and actual effect of which was to drive them, or at least their circulation, out of existence, was sustained, although the result was one that Congress had no constitutional power to require. The Court made short work of the argument as to the purpose of the act." Holmes, J., dissenting, in *Hammer* v. *Dagenhart*, 247 U. S. 251, 278–279.

[51] The tax upon oleomargarine colored to resemble butter "was so great as obviously to prohibit the manufacture and sale." Holmes, J., dissenting, in *Hammer* v. *Dagenhart*, 247 U. S. 251, 278.

ercise of the taxing power is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed. *Veazie Bank* v. *Fenno*, 8 Wall. 533, 548; *McCray* v. *United States*, 195 U. S. 27, 60–61; cf. *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, 48.

Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts. *Veazie Bank* v. *Fenno, supra; McCray* v. *United States, supra*, 56–59; *United States* v. *Doremus, supra*, 93–94; see *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44, 45; cf. *Arizona* v. *California*, 283 U. S. 423, 455; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 210; *Weber* v. *Freed*, 239 U. S. 325, 329–330; *Fletcher* v. *Peck*, 6 Cranch 87, 130. They will not undertake, by collateral inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Federal Constitution. *McCray* v. *United States, supra;* cf. *Magnano Co.* v. *Hamilton, supra*, 45.

Here the annual tax of $200 is productive of some revenue. We are not free to speculate as to the motives which moved Congress to impose it, or as to the extent to which it may operate to restrict the activities taxed. As it is not attended by an offensive regulation, and since it operates as a tax, it is within the national taxing power. *Alston* v. *United States*, 274 U. S. 289, 294; *Nigro* v.

United States, supra, 352, 353; *Hampton & Co.* v. *United States,* 276 U. S. 394, 411, 413.

These cases arising under both the commerce and taxing powers demonstrate that Federal statutes are not rendered invalid because of their "deterrent" or "regulatory" effect upon matters not subject to congressional power—that "if an Act is within the powers specifically conferred upon Congress, * * * it is not made any less constitutional because of the indirect effects that it may have, however obvious it may be that it will have those effects, * * *." Holmes, J., dissenting, in *Hammer* v. *Dagenhart,* 247 U. S. 251, p. 277.

2. *The purpose of a regulation of interstate commerce cannot affect its constitutionality; but if purpose be relevant, this statute has a valid commerce purpose*

(a) THE PURPOSE OF A REGULATION OF INTERSTATE COMMERCE CANNOT AFFECT ITS CONSTITUTIONALITY

This Court has from the beginning recognized that "the commerce clause (Art. I, § 8, par. 3) confers upon the Congress 'the power to regulate, that is, to prescribe the rule by which commerce is to be governed.' This power 'is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution.' *Gibbons* v. *Ogden,* 9 Wheat. 1, 196." *Kentucky Whip and Collar* v. *Illinois Central Railroad,* 299 U. S. 334, 345; *United States* v. *Carolene Products Co.,* 304 U. S. 144, 147; *Currin* v. *Wallace, supra.*

The view that a regulation of interstate commerce may be invalid if enacted for a *purpose* not directly related to such commerce is consistent neither with these principles nor with the language of the Constitution. When Congress regulates intrastate transactions which directly affect interstate commerce, the purpose of the regulation may be relevant, since the regulation as well as the subject regulated must have some relation to interstate commerce. Cf. *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330. But such considerations are entirely out of place when what is regulated is interstate commerce itself.

The contention that the commerce power may not be exercised for purposes not in themselves directly concerned with interstate commerce seems to rest upon a confusion between the *power* on the one hand and the *subject matter* upon which, and the *purpose* or *objective* for which, the power may be exercised, on the other. The fact that the wide varieties of subject matter upon which the granted powers of Congress may be exerted (and upon some of which they will have to be exerted if they are exerted at all), are not specifically enumerated in the Constitution, obviously does not mean that Congress is barred from asserting its powers upon such subject, for none are enumerated. In the same way the fact that the various objectives which may be deemed desirable by Congress, and for which Congress may conceivably wish to assert one or more of its granted powers, are not ex-

pressly enumerated, obviously does not mean that Congress must confine itself to objectives which *are* enumerated, for none are, save in the broad language of the preamble. The proposition that the power to regulate commerce can be asserted only for the sake of commerce, or for a purpose related to commerce rests upon an assumption the general acceptance of which would make practically impossible either the construction of the Constitution or the operation of government under it.

Such a construction of the commerce clause was repudiated in the first case arising under it. *United States* v. *The William, supra,* p. 51. Judge Davis there referred to the history of the commerce clause at the time the Constitution was ratified, and concluded that the power over commerce was not limited to its advancement but included the power to abridge it "in favor of the great principles of humanity and justice." He said (28 Fed. Cas., at 621):

> Further, the power to regulate commerce is not to be confined to the adoption of measures, exclusively beneficial to commerce itself, or tending to its advancement; but, in our national system, as in all modern sovereignties, it is also to be considered as an instrument for other purposes of general policy and interest. The mode of its management is a consideration of great delicacy and importance; but, the national right, or power, under the constitution, to adapt regulations of commerce to other purposes, than

> the mere advancement of commerce, appear to me unquestionable. * * * It was perceived, that, under the power of regulating commerce, congress would be authorized to abridge it, in favour of the great principles of humanity and justice. Hence the introduction of a clause, in the constitution, so framed, as to interdict a prohibition of the slave trade, until 1808. Massachusetts and New York proposed a stipulation, that should prevent the erection of commercial companies, with exclusive advantages. Virginia and North Carolina suggested an amendment, that "no navigation law, or law regulating commerce, should be passed, without the consent of two thirds of the members present, in both houses." These proposed amendments were not adopted, but they manifest the public conceptions, at the time, of the extent of the powers of Congress, relative to commerce.

The notion that a granted power may not be employed for any purpose not expressed in the grant was early sought to be introduced into our constitutional thinking by opponents of a protective tariff, and was answered conclusively and exhaustively by Mr. Justice Story. Speaking of the taxing power, Mr. Justice Story says (*Commentaries on the Constitution,* Sec. 965, 4th ed.):

> The language of the Constitution is, "Congress shall have power to lay and collect taxes, duties, imposts, and excises." If the clause had stopped here, and remained in this

absolute form, * * * there could not have been the slightest doubt on the subject. The absolute power to lay taxes includes the power in every form in which it may be used, *and for every purpose to which the legislature may choose to apply it.* This results from the very nature of such an unrestricted power. *A fortiori* it might be applied by Congress to purposes for which nations have been accustomed to apply it. Now nothing is more clear, from the history of commercial nations, than the fact that the taxing power is often, very often, applied for other purposes than revenue. It is often applied as a regulation of commerce. It is often applied as a virtual prohibition upon the importation of particular articles for the encouragement and protection of domestic products and industry; for the support of agriculture, commerce, and manufactures; for retaliation upon foreign monopolies and injurious restrictions; for mere purposes of state policy and domestic economy; sometimes to banish a noxious article of consumption; sometimes as a bounty upon an infant manufacture or agricultural product; sometimes as a temporary restraint of trade; sometimes as a suppression of particular employments; sometimes as a prerogative power to destroy competition, and secure a monopoly to the government! [Italics supplied.]

The Constitution does not explicitly say that the Federal Government has power to encourage and protect domestic production, to support agriculture

ful" (Appendix, p. 208). The emphasis throughout is on keeping excessive supplies *off the market*, not on prohibiting their production.

(3) The marketing quota regulations do not necessarily affect production. The distinction between regulating production and regulating marketing is not an academic or unreal one. Tobacco (as well as the other crops regulated under Title III of the Act) can be stored for a long period of time. Indeed practically all tobacco is stored for a period of one to five years before it is used (R. 63). If an amount in excess of marketing quotas is grown, that excess can be stored for sale in years when marketing quotas are not in effect, or when a grower produces less than his quota. Although individual growers may have difficulty in redrying tobacco for storage, growers acting cooperatively can readily do so (see pp. 23–24, *supra*). Furthermore, the Act provides for federal loans to enable farmers to finance the storage of commodities (Sec. 302 (a)).

The possibility of growers later selling excess tobacco withheld from market in a quota year is not a merely theoretical prospect. The Act provides that quotas may be established only after the Secretary has found that the total supply of tobacco exceeds the reserve supply level and after two-thirds of the farmers engaged in producing the crop have voted in favor of the quota (Sec. 312 (a), (c)). If either of these two conditions is not met in any year, quotas do not become operative the next year.

Adverse weather conditions or numberless other factors may reduce production in any year so as to remove all basis for quotas in the next year. All tobacco held over may be sold in such a year. Similarly, adverse conditions confined to a local area or to individual farms will leave some farmers each year without their full quota of new tobacco to sell. Even if quotas are in effect such a farmer may then sell his stored tobacco within his quota.

Furthermore, the farmers themselves may procure the suspension of quotas in any year. The present litigation involves quotas for the marketing year 1938–1939 (July 1, 1938–June 30, 1939). Although on November 21, 1938 (3 Fed. Register 2769), the Secretary proclaimed that the supply as of the beginning of the marketing year 1939–1940 exceeded the reserve supply level for that marketing year and specified a national marketing quota, over one-third (though considerably less than a majority) of the growers voted against the establishment of such quotas in the referendum held under the Act on December 10, 1938. Accordingly, no marketing quotas for flue-cured tobacco will be in effect for the year 1939–1940, and any excess stocks not sold in the marketing year 1938–1939 may be marketed free of penalty after the expiration of that period.[45]

[45] Although the individual growers in Georgia and Florida did not have facilities for redrying and storing their excess tobacco, they could have foreseen the problem and taken steps to meet it. See opinion of Judge Sibley, R. 186.

acceded to it, for it would have sealed their ruin. The same reasoning would apply to the agricultural States; for the regulation of commerce, with a view to encourage domestic agriculture, is just as important, and just as vital to the interests of the nation, and just as much an application of the power, as the protection or encouragement of manufactures. It would have been strange, indeed, if the people of the United States had been solicitous solely to advance and encourage commerce, with a total disregard of the interests of agriculture and manufactures, which had, at the time of the adoption of the Constitution, an unequivocal preponderance throughout the Union. It is manifest, from contemporaneous documents, that one object of the Constitution was to encourage manufactures and agriculture by this very use of the power.

* * * * *

§ 1089. Now, the motive of the grant of the power is not even alluded to in the Constitution. It is not even stated that Congress shall have power to promote and encourage domestic navigation and trade. A power to regulate commerce is not necessarily a power to advance its interests. It may in given cases suspend its operations and restrict its advancement and scope. Yet no man ever yet doubted the right of Congress to lay duties to promote and encourage domestic navigation, whether in the form of tonnage duties, or other preferences and privileges, either in the foreign trade,

or coasting trade, or fisheries. It is as certain as anything human can be, that the sole object of Congress, in securing the vast privileges to American built ships, by such preferences, and privileges, and tonnage duties, was, to encourage the domestic manufacture of ships, and all the dependent branches of business. It speaks out in the language of all their laws, and has been as constantly avowed and acted on as any single legislative policy ever has been. No one ever dreamed that revenue constituted the slightest ingredient in these laws. They were purely for the encouragement of home manufactures, and home artisans, and home pursuits. Upon what grounds can Congress constitutionally apply the power to regulate commerce to one great class of domestic manufactures, which does not involve the right to encourage all? * * * There are many products of agriculture and manufactures which are connected with the prosperity of commerce as intimately as domestic ship-building. If the one may be encouraged, as a primary motive in regulations of commerce, why may not the others? The truth is, that the encouragement of domestic ship-building is within the scope of the power to regulate commerce, simply because it is a known and ordinary means of exercising the power. It is one of many, and may be used like all others, according to legislative discretion. The motive to the exercise of a power can never form a consti-

tutional objection to the exercise of th power.

Appellants' argument amounts to contending that in addition to enumerating the powers conferred on the federal government, the Constitution should have enumerated the infinite variety of objectives or purposes for which those powers may be exercised. The plain answer is that it does not do so. The framers of the Constitution, designedly according to Marshall, couched even their grants of power in broad general terms, leaving much to implication. What Marshall has said in a famous passage in regard to this economy of expression relating to powers, amply explains and justifies the decision of the framers not to enumerate objectives. Marshall says (*McCulloch* v. *Maryland*, 4 Wheat. 316, 407):

> A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deduced from the nature of the objects themselves.

This Court in repeated instances has sustained the exercise of the federal power over interstate

commerce to accomplish objectives, the promotion of which is not only not conferred on Congress by the Constitution in express terms but which, within the geographical limits of each separate state, were appropriate objects of state legislation. Thus Congress has no general power to protect the morals of the people of the United States and, more specifically, has no power to give such protection by the suppression of lotteries. On the other hand, each state, within its own limits, may employ its police power to suppress lotteries. Nevertheless, this Court has held that the commerce power may be used with the objective of suppressing lotteries so far as that objective may be obtained by regulations of commerce, and the regulations are not invalid because the suppression of lotteries is their object (*Champion* v. *Ames,* 188 U. S. 321).

It could have been urged against the Pure Food and Drug Act that its purpose was to promote health and that the Constitution nowhere confers upon the federal government any power to promate health (*Hipolite Egg Co.* v. *United States,* 220 U. S. 45); it could have been urged against the Mann White Slave Act that its objective was to promote morality and that the Constitution nowhere confers upon the federal government the power to promote morality (*Hoke* v. *United States,* 227 U. S. 308); it could have been urged against the Motor Vehicle Theft Act and the Kidnaping Act that their objective was to prevent theft (of property or persons) and that the

Constitution nowhere confers upon the federal government the power to prevent theft (*Brooks* v. *United States,* 267 U. S. 432; *Gooch* v. *United States,* 297 U. S. 124). In all these cases, however, the Acts were sustained because, irrespective of their various objectives, what was regulated was interstate commerce. The fact that the objective of each was, in one way or another, to promote the general welfare did not invalidate them as regulations of commerce, but served rather to justify them under the due process clause. See p. 156, *infra.*

This Court has stated that Congress may exercise "the police power, for the benefit of the public, in the field of interstate commerce." *Brooks* v. *United States,* 267 U. S. 432, 436–437; *Ky. Whip & Collar Co.* v. *I. C. R. Co.,* 299 U. S. 334, 347. As the Chief Justice declared in his opinion in *Carter* v. *Carter Coal Co.,* 298 U. S., at 319: "We are not at liberty to deny to the Congress, with respect to interstate commerce, a power commensurate with that enjoyed by the States in the regulation of their internal commerce. See *Nebbia* v. *New York,* 291 U. S. 502." [52] The power of the states "in the regu-

[52] This view as to the scope of the commerce power stems from *Gibbons* v. *Ogden,* 9 Wheat. 1, 197, where Chief Justice Marshall said:

> * * * the power over commerce with foreign nations, and among the several states, is vested in congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the con-

lation of their internal commerce" is absolute, subject only to the specific limitations of the Constitution, including those contained in the Fourteenth Amendment. States obviously need not regulate such commerce for a "commerce purpose," but may do so for any reason which their legislatures believe to be in the public interest. In the field of interstate commerce Congress must be equally free, subject only to the specific limitations in the Fifth Amendment. If federal legislation regulating interstate commerce does not violate the due process clause, it also must be constitutional irrespective of whether it has a "commerce purpose." The concept of a commerce purpose as a limitation on the power of Congress to regulate interstate commerce is thus inconsistent both with the historical background of the Constitution and with the cases decided under it."

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stitution of the United States. The wisdom and the discretion of congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.

In his concurring opinion in the same case Mr. Justice Johnson stated that (p. 227):

> The "power to regulate commerce," here meant to be granted, was that power to regulate commerce which previously existed in the states.

" The only case which might be regarded as inconsistent with these views is *Hammer* v. *Dagenhart*, 247 U. S. 251, which we believe to have been wrongly decided. The case is discussed *infra*, pp. 112–118.

(b) THIS ACT HAS A LEGITIMATE COMMERCE PURPOSE

Although it is our view that when interstate commerce itself is being regulated the purpose of Congress is immaterial, examination of the purposes of Congress in enacting the Agricultural Adjustment Act of 1938 will demonstrate that the statute is valid even if the most orthodox "commerce purpose" is deemed requisite. The purposes of Congress in enacting the marketing quota provisions of the Act are not subject to inference or speculation. Both the statute itself and the reports of the Congressional committees approving it state specifically what those purposes are.

Section 2 of the Act, entitled "Declaration of Policy," provides *inter alia*[54] that—

> It is hereby declared to be the policy of Congress * * * to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices.

[54] The omitted portion sets forth the policy supporting the Soil Conservation and Domestic Allotment Act, as amended by Title I of the Act.

The report of the Committee on Agriculture of the House of Representatives (H. R. Rep. 1645, 75th Cong., 2d Sess.) referring to the quota provisions of the House Bill, H. R. 8505, which, in the case of tobacco are substantially the same as the challenged sections of the Act, states (Appendix, p. 208):

> In years of excessive production it provides for the withholding from market in interstate and foreign commerce of surpluses of the five major non-perishable agricultural commodities for the purpose of removing the depressing effect which such surpluses exert on such commerce.

The Report of the Senate Committee on Agriculture and Forestry, S. Rep. 1295, 75th Cong., 2d Sess., likewise discloses the purpose to regulate interstate and foreign commerce in order to maintain a balanced quantity of farm products marketed in commerce and thereby to avoid the disorderly marketing which results from surpluses in years of excessive yield and shortages in lean years, and to stabilize prices so as to protect farmers against unreasonably high prices (Appendix, pp. 233–234).

Such statements by Congress as to its purposes in enacting legislation will, of course, be accepted by the courts. Although legislative findings of objective facts supporting constitutionality may establish the facts so described only presumptively, subject to disproof in judicial proceedings (*United*

States v. *Carolene Products Co.*, 304 U. S. 152), a Congressional declaration of legislat purpose—a subjective matter—is not subject review.

It should be noted that these purposes are to achieved only through control of the amount ma keted, not of the amount produced. The statu was not designed to prohibit production in exce of current market demands. On the contrary was designed to encourage farmers to store quan tities produced in excess of marketing quotas fo use in lean years (see p. 63, *supra*).

That stabilization of the flow of commodities i interstate commerce and of the prices at which such goods are marketed, for the benefit of producer and consumers, is an appropriate purpose unde the commerce clause cannot be gainsaid.

The appellants concede the power of Congres to prohibit all interstate commerce in things con traband or things likely to be injurious to the in habitants of the several states (Appellants' Brief p. 16). It is evident from the record and from th evidence considered by Congress that the market ing of abnormally excessive supplies of tobacc directly injures those who grow it and sell it in in terstate and foreign commerce, and, if unregu lated, interrupts and destroys such commerce it self. The prevention of these economic effect upon commerce and upon those engaged in com merce is much more closely related to the underly

ing objectives of the commerce clause than protection of the public morals against lotteries (*Champion* v. *Ames, supra*), or prostitution (*Hoke* v. *United States, supra*), or theft (*Brooks* v. *United States, supra*), or kidnaping (*Gooch* v. *United States, supra*), or the protection of the public health against diseased livestock (*Reid* v. *Colorado,* 187 U. S. 137), or adulterated foods and drugs (*Hipolite Egg Co.* v. *United States,* 220 U. S. 45; *Seven Cases* v. *United States,* 239 U. S. 510), or diseased plants (*Oreg.-Washington Co.* v. *Washington,* 270 U. S. 87). The original purpose of the commerce clause was primarily economic, and the objectives of the most important commerce legislation enacted by Congress, like those of this Act, were to improve the economic well-being of the nation.

Probably the earliest commerce statute of note was the protective tariff, first enacted in 1789 (Act of July 4, 1789, c. 2, 1 Stat. 24). The well-known purpose of that statute, as well as of its numerous successors, was to protect and encourage American manufacturers against foreign competition by raising the prices on imported goods, thereby permitting domestic manufacturers to sell at increased prices. See Story, *supra,* §§ 1091–1092; Hamilton, *Report on Manufactures,* III Hamilton's Works 192. Similarly, the purpose of the Agricultural Adjustment Act is to raise prices to farmers (most of whom sell in interstate commerce) and stabilize marketings. That the pro-

tection of manufacturing through a tariff and t
encouragement of agriculture were deemed b
Story to be equally within the commerce power
appears from the passage quoted, *supra*, pp. 79–8
part of which so closely fits the instant case as t
warrant repetition. The learned Justice there
states (*Commentaries on the Constitution*, Sec.
1082):

> Now it is well known that, in commercial and manufacturing nations, the power to regulate commerce has embraced practically the encouragement of manufactures * * * When the Constitution was framed, no one ever imagined that the power of protection of manufactures was to be taken away from all the States, and yet not delegated to the

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[55] The constitutionality of the tariff can be based on either the commerce power or the taxing power (*Board of Trustees* v. *U. S.*, 289 U. S. 48; *Hampton & Co.* v. *United States*, 276 U. S. 394). A purpose to protect the interests of manufacturers or farmers would seem to be more closely related to the former power than to the latter.

As was said by Judge Sibley, speaking for the Circuit Court of Appeals for the Fifth Circuit in *Whittenburg* v. *United States*, 100 F. (2d) 520, 522, after referring to the statement of policy in the Act (Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. § 608)):

> * * * This really states the public aim of the Act, and marks it as intending to regulate and sustain interstate commerce for the public good. But if better prices to farmers be taken as the aim, it is only the correction of an injustice that has long been wrought by another use of the commerce power in the fixing of protective tariffs, by which revenue was not sought to be raised, but prices to manufacturers increased, largely at the farmers' expense. The tariff operates only indirectly to raise prices, but is very effectual.

> Union. The very suggestion would of itself have been fatal to the adoption of the Constitution. The manufacturing States would never have acceded to it upon any such terms * * * The same reasoning would apply to the agricultural States; *for the regulation of commerce, with a view to encourage domestic agriculture, is just as important, and just as vital to the interests of the nation, and just as much an application of the power, as the protection or encouragement of manufactures.* It would have been strange, indeed, if the people of the United States had been solicitous solely to advance and encourage commerce, with a total disregard of the interests of agriculture and manufactures * * *. [Italics supplied.]

In Sec. 1084 of the *Commentaries,* Justice Story proceeds:

> * * * No man can doubt that domestic agriculture and manufactures may be most essentially promoted and protected by regulations of commerce. No man can doubt that it is the most usual, and generally the most efficient means of producing those results. * * *

Similarly the ultimate purpose of every important statute enacted under the commerce clause has been not merly to promote the physical movement of commodities but to protect and benefit the public or particular groups of persons constituting the public. The ultimate purpose of the original interstate Commerce Act was to protect shippers against

and manufactures, to set up a policy of domestic economy, to restrain trade, temporarily or otherwise, to suppress particular employments, or to secure a government monopoly. The Constitution does, however, explicitly say that the Federal Government has power to lay and collect taxes, duties, imposts, and excises, and since the taxing power is susceptible of being used to further the foregoing objectives, the Federal Government, as Mr. Justice Story points out, has power to further them through use of the taxing power. The fact that they are not set out as express powers in the Constitution does not cut down the plenary grant of the taxing power to the point where it may not be exerted to effectuate them.

Mr. Justice Story develops the same argument in connection with the commerce power. (*Commentaries on the Constitution*, Secs. 1079–1089.) He states the position which he is refuting, and which represents precisely the position now taken by the appellants, as follows (Sec. 1079):

> But the question is a very different one, whether, under pretense of an exercise of the power to regulate commerce, Congress may in fact impose duties for objects wholly distinct from commerce. The question comes to this, whether a power exclusively for the regulation of commerce is a power for the regulation of manufactures?

In answering the question he begins by pointing out that those who claim that the commerce power should be used only for the sake of commerce and

the taxing power only for the sake of revenue "* * * admit that the power may be applied so as incidentally to give protection to manufactures, when revenue is the principal design; and that it may also be applied to countervail the injurious regulations of foreign powers, when there is no design of revenue" (Sec. 1081). He then continues (Sec. 1081):

> * * * These concessions admit, then, that the regulations of commerce are not wholly for purposes of revenue, or wholly confined to the purposes of commerce, considered *per se*. If this be true, then other objects may enter into commercial regulations; and, if so, what restraint is there as to the nature or extent of the objects to which they may reach, which does not resolve itself into a question of expediency and policy? It may be admitted that a power given for one purpose cannot be perverted to purposes wholly opposite, or beside its legitimate scope. But what perversion is there in applying a power to the very purposes to which it has been usually applied? * * *
>
> § 1082. * * * When the Constitution was framed, no one ever imagined that the power of protection of manufactures was to be taken away from all the States, and yet not delegated to the Union. The very suggestion would of itself have been fatal to the adoption of the Constitution. The manufacturing States would never have acceded to it upon any such terms; and they never could, without the power, have safely

has frequently indicated. *Second Employers' Liability Cases,* 223 U. S. 1, 47; *Texas & N. O. R. Co.* v. *Ry. Clerks,* 281 U. S. 548, 570; *Labor Board* v. *Jones & Laughlin,* 301 U. S. 1, 37. "A power to regulate commerce is not necessarily a power to advance its interests. It may in given cases suspend its operations and restrict its advancement and scope." Story, *Commentaries,* Sec. 1089. See also *United States* v. *The William,* Fed. Cas. No. 16,709, 28 Fed. Cas. 614, p. 106.

3. *Even though the Act were to be regarded as a direct regulation of the amount of tobacco produced, it would not for that reason fall without the commerce power*

We believe that this Act has been plainly shown to be a regulation of marketing and not of production. However, the appellants' arguments are all based upon the proposition that the Act is a regulation of production. Accordingly, we deem it desirable to point out, in addition, that even if it were so regarded it would nevertheless be valid.[57]

This Court has frequently pointed out that "the power to regulate commerce is the power to enact

[57] We have shown that there is a distinction between regulating the amount marketed and regulating the amount produced. However, in this section of the brief we are accepting, for purposes of the argument, appellants' premise that this distinction is unreal. We, accordingly, treat findings and evidence as to the quantity of tobacco "marketed" and "produced" without making the differentiation which we insist upon elsewhere in the brief.

'all appropriate legislation' for 'its protection and advancement' (*The Daniel Ball,* 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*County of Mobile* v. *Kimball,* 102 U. S. 691, 696, 697); 'to foster, protect, control, and restrain.' *Second Employers' Liability Cases, supra,* p. 47. See *Texas & N. O. R. Co.* v. *Ry. Clerks, supra.* That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it'. *Second Employers Liability Cases,* p. 51; *Schechter Corp.* v. *United States, supra.* Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. * * *

"The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. * * *" *Labor Board* v. *Jones & Laughlin,* 301 U. S. 1, at 36–38; *Santa Cruz Co.* v. *Labor Board,* 303 U. S. 453, 464.

These principles have been applied to intrastate transactions occurring before interstate commerce begins. *Coronado Co.* v. *U. M. Workers,* 268 U. S. 295; *Santa Cruz Co.* v. *Labor Board, supra.* In the

Santa Cruz case the Court held that (303 U. S. at 465):

> With respect to the federal power to protect interstate commerce in the commodities produced, there is obviously no difference between coal mined, or stone quarried, *and fruit and vegetables grown.* [Italics supplied.]

The Court there rejected the petitioner's argument as to its productive facilities not being subject to the commerce clause partly upon the ground that petitioner itself was engaged in interstate commerce. This is just as true of the growers of tobacco here as it was of the Fruit Packing Company; both sell the commodities they grow or process for shipment in interstate commerce.[58]

Thus even if the Act were to be deemed a regulation of production, it would not be invalid in the absence of a showing that the production so regulated does not directly affect interstate commerce.

The facts of record and those of which this Court may take notice demonstrate that the effect upon commerce of the amount of tobacco produced is direct and substantial. They thus bulwark the presumption that facts exist to support the legislative judgment and the findings of Congress in the statute and committee reports, which, unless dis-

[58] Congress may also regulate local activities of persons who, themselves, engage in no interstate activities whatever if their activities directly affect interstate commerce. *Consolidated Edison Co.* v. *National Labor Relations Board*, No. 19, this term.

proved, are binding upon the Court. See *U. S.* v. *Carolene Products Co.*, 304 U. S. 144; *Stafford* v. *Wallace*, 258 U. S. 495; and *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1. Here neither the presumption nor the findings have been disproved. On the contrary the record supports them. Thus the Court here is doubly bound to accept the findings of the legislature.

In Section 311 of the Act Congress made the following findings with respect to tobacco:

> (b) The disorderly marketing of such abnormally excessive supplies affects, burdens, and obstructs interstate and foreign commerce by (1) materially affecting the volume of such commodity marketed therein, (2) disrupting the orderly marketing of such commodity therein, (3) reducing the price for such commodity with consequent injury and destruction of interstate and foreign commerce in such commodity, and (4) causing a disparity between the prices for such commodity in interstate and foreign commerce and industrial products therein, with a consequent diminution of the volume of interstate and foreign commerce in industrial products.
>
> (c) Whenever an abnormally excessive supply of tobacco exists, the marketing of such commodity by the producers thereof directly and substantially affects interstate and foreign commerce in such commodity and its products, and the operation of the provisions of this Part becomes necessary

and appropriate in order to promote, foster, and maintain an orderly flow of such supply in interstate and foreign commerce.

These findings are repeated and amplified in the reports of the Congressional Committees (see Appendix, *infra, pp.* 205–240). The legislative findings and the record demonstrate that the amount of tobacco produced and marketed determines the supply, which consists of the amount produced and marketed each year, plus the quantity in storage from preceding years. Supply, present and prospective, is the predominant determinant of the price (R. 78). Because the cost of tobacco is only a small part of the cost to consumers of manufactured tobacco products [59] and because the manufacturers follow fixed price policies (H. R. Rep. 1645, Appendix, p. 224), neither the consumer demand nor the price paid

[59] A computation from the record demonstrates that the cost of the flue-cured tobacco (52 percent of the total tobacco) in a standard package of cigarettes selling from 12 to 15 cents is less than three-fourths of a cent. The record shows that almost all cigarettes weigh *less* than 3 pounds per thousand (R. 71). Assuming a weight of 3 pounds per thousand, the weight of a package of 20 cigarettes would be $^{6}/_{100}$ of a pound. With 52 percent of the tobacco flue-cured (R. 64), the flue-cured tobacco in the pack would weigh $^{3}/_{100}$ of a pound. At the 1937 price of 23 cents a pound (R. 79) this would bring the farmer .69 of a cent. This figure should be adjusted slightly upwafd because of a small difference between farm sales weight of tobacco and weight after processing.

The remainder of the price paid by the consumer goes to cover taxes, manufacturing, distributing, advertising, and

by consumers is materially affected by changes in the price paid to growers for tobacco. Accordingly, a decrease in the farm price does not result in increased consumption, with the consequent adjustment between supply, demand, and price which would be expected under orthodox, economic theory (H. R. Rep. 1645; Appendix, p. 224). With demand relatively stable price is controlled largely by supply.

The price of course, also affects the supply, but only at yearly intervals. Prices may vary from day to day while the supply depends upon the amount marketed each year. Moreover, since farmers have inadequate knowledge of demand and would be unable to use that knowledge if they possessed it, since at the time they plant their crop, they are only informed of the previous years' prices, and since (except after years of unduly low prices) each farmer feels that it is to his interest to plant as much as he can, they are in no position to adjust either their marketing or their production so as to conform accurately to demand or to control price except in a rough way and over a period of years (R. 73–74).

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storage costs, and profits for the manufacturers and dealers (R. 73–74, 84).

A change of 20 percent in the farm price would affect the consumer's price only 1 percent—from .12 to .15 of a cent. Changes that small probably would not be passed on to the consumer through an increase in the retail price, even if the manufacturers did not follow fixed price policies.

Consequently, although price and supply each react upon the other, over a short term, price is dominated by supply. The record states that: "The price of flue-cured tobacco reacts to changes in the supply. During the period 1920 to 1937 the changes in the supply were associated with changes in the price. With the exception of one year (1922), the price has decreased relative to the previous year when the supply increased relative to the previous year. Without exception the price has increased relative to the previous year when the supply decreased relative to the previous year (Table 14, Chart II)" (R. 78).

Even more significant than the obvious relationship between supply and price is the relationship between an excessive supply and a fair price to the farmer. The record states that "In years when the actual supply was greater than the reserve supply level, the price of flue-cured tobacco was lower relative to the parity price.[60] * * * In years when the actual supply was less than the reserve supply level, prices of flue-cured tobacco were higher relative to parity prices" (R. 78).

Moreover a relatively small excess will bring about a large diminution of price. (See Chart IV,

[60] The "parity price" or "computed price" used in the stipulation (R. 78–79) as an index of the purchasing power of a pound of tobacco is the season's average price that would have given flue-cured tobacco the same purchasing power with respect to things farmers buy that existed during the ten-year period August 1919–July 1929 (R. 78–79) (see Section 2, and Section 301 (a) (1) Appendix, pp. 177, 179).

.) For example between 1929 and 1930 the
s of actual supply over the reserve supply level
ased by only 6 percent (R. 76). The aver-
rice in the same period dropped 33.3 percent,
20 percent below the parity price to 40 per-
elow the parity price (R. 79, 82). As would
pected where demand is inelastic a small ex-
of supply usually causes a large decrease in

is analysis indicates that the most appropriate
od of stabilizing the price of tobacco (apart
price-fixing itself) is by striking at the pri-
cause of price fluctuations—an unbalanced
y. That may be done either by regulating
uantity produced or by regulating the quan-
which may be marketed when supplies are
sive. Either method would have the effect of
ishing fluctuations. Thus control of produc-
would constitute one appropriate means of
cting interstate commerce in tobacco against
rice fluctuations described above.

at it is proper for Congress to regulate local
ty in order to stabilize interstate prices cannot
bject to doubt. The most striking illustration
ch an exercise of federal power is the Grain
res Act upheld in *Chicago Board of Trade* v.
, 262 U. S. 1. That statute regulated contracts
ales of grain for future delivery, most of
, this Court said (p. 36), "do not result in
l delivery but are settled by offsetting them

unreasonable and discriminatory rail rates. Th objective of the Sherman Act was to protect con sumers against unreasonably high prices. The purposes of the Ashurst-Sumners Prison-Made Goods Act was to protect manufacturers and work- ers against the competition of poorly paid prison labor. The purpose of the Tobacco Inspection Act was to protect farmers against undue price varia- tions. Each of the statutes referred to regulates interstate commerce itself,[56] as does the Act in ques- tion here.

The statutes upheld in *Stafford* v. *Wallace*, 258 U. S. 495, and *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, regulated intrastate transactions di- rectly affecting interstate commerce for the pri- mary purpose of protecting farmers against low or fluctuating prices and unfair practices. In the *Stafford* case this Court pointed out (p. 514):

> The chief evil feared is the monopoly of the packers, enabling them unduly and ar- bitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys. * * * Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper, and increase the price to be paid by the consumer. If they be exorbitant or unreasonable, they are an undue burden on the commerce which the stockyards are intended to facilitate. Any

[56] Except for the Sherman Act, which also applies to intra- state restraints upon interstate commerce. See *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295.

> unjust or deceptive practice or combination that unduly and directly enhances them is an unjust obstruction to that commerce.

The purpose of the regulation upheld in the *Olsen* case was the protection of producers and consumers against fluctuations in the price of grain caused by speculation and manipulation of the futures markets (262 U. S., at 537). The Court accepted the finding of Congress that such price fluctuations directly burdened and obstructed interstate commerce (*id.* at 39–40), thus, plainly indicating that control of the prices of agricultural commodities was a proper purpose of Congress under the commerce clause.

This brief analysis of the statutes and authorities demonstrates plainly that the commerce clause has always been regarded as most appropriately to be exercised to benefit the economic interests of the public—of manufacturers, farmers, shippers, or consumers. And the kind of regulation most frequently sustained has been that which has as its ultimate objective the raising (the tariff), lowering (Sherman Act), or stabilizing (Tobacco Inspection and Grain Futures Acts) of prices. As the Court pointed out in the *Olsen* case, in upholding federal regulation of intrastate transactions (262 U. S., at 40):

> The question of price dominates trade between the States. Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it.

One of the primary goals of Congress in enacting the Agricultural Adjustment Act of 1938, was to control the marketing of agricultural commodities in order to stabilize farm prices at an adequate, fair level. A direct regulation of the prices sought to be controlled, most of which are prices in interstate sales, would, in the language of Mr. Justice Cardozo in the *Carter* case, have been "to regulate commerce itself" (298 U. S., at 326). Thus, the purpose of Congress in regulating one aspect of interstate commerce—the amount marketed—is to influence another aspect of interstate commerce—the price. A statute with an objective more legitimately or closely related to the regulation of interstate commerce would be difficult to find.

The same is true of the other primary purpose of the Act—balancing the flow in commerce of agricultural commodities so as to insure distribution proportionate to demand in years of over-production and of shortage. The *Stafford* and *Olsen* cases demonstrate that stabilizing the market through the removal of undesirable fluctuations in price and in the amount moved is an appropriate exercise of the commerce power even if applied to intrastate transactions. All the more so when interstate commerce itself is regulated as it is here.

What has been said disposes of the argument that the Act cannot be a regulation of commerce because it does not "benefit" commerce. A statute which is designed to aid and protect an interstate industry, including producers who sell in interstate

commerce, is designed to benefit commerce. Appellants' argument assumes that commerce is benefited only when it is increased, not when it is restricted. That obviously is not so, as the many cases sustaining statutes prohibiting commerce demonstrate. As Mr. Justice Cardozo said in his dissenting opinion in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, at 438 (on a point not passed upon in the majority opinion), with respect to restricting the interstate transportation of illegally produced petroleum:

> In its immediacy, the exclusion * * * from the channels of transportation is a restriction of interstate commerce, not a removal of obstructions. * * * But what is restriction in its immediacy may in its ultimate and larger consequences be expansion and development.

Commerce is benefited when an over-supply which unduly depresses prices is kept off the market, as well as when an obstruction to trade is removed. Cf. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 372. There is no such thing as benefit to commerce in the abstract; the commerce power protects and promotes the interests of the public generally and of the persons who engage in or are dependent upon commerce.

But in any event the Constitution does not give Congress power only to "benefit" or "promote" commerce, but to regulate it. The power to regulate includes the power to restrain, as this Court

with other contracts of the same kind." The sales were between buyers and sellers in the city of Chicago, but they affected the price at which cash grain was sold throughout the country. Thus the question was not one of regulating the movement or the sale of a commodity in interstate commerce, but of regulating purely local activity which Congress had found affected the price of commodities moving in interstate commerce and caused price fluctuations which burdened and obstructed interstate commerce.

This Court sustained the regulation, declaring (pp. 39, 40):

> Manipulations of grain futures for speculative profit * * * exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only * * * justifiable hedging but disturb the normal flow of actual consignments.
>
> * * * * *
>
> If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced, it would seem to follow that manipulations of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in that commerce are equally direct. The question of price dominates trade between the States. *Sales of an article which affect the*

country-wide price of the article directly affect the country-wide commerce in it. [Italics supplied.]

If Congress can regulate intrastate sales of grain futures because of their effect upon the price of grain,[61] it should equally have the power to regulate the quantity of tobacco marketed or produced because of its effect upon the price of tobacco.[62]

Neither argument nor evidence should be necessary to demonstrate that the amount of tobacco produced directly affects the amount shipped in interstate commerce. The larger—or smaller—quantity produced, the larger—or smaller—the quantity moving in interstate commerce. Control of the amount produced clearly would be a reasonable and appropriate means of exercising the unquestionable power of Congress to regulate the amount of a commodity to be permitted in interstate com-

[61] The more recent cases sustaining the validity of regulation of the futures markets are *Moore* v. *Chicago Mercantile Exchange*, 90 F. (2d) 735 (C. C. A. 7th), certiorari denied, 299 U. S. 606; *Bennett* v. *Board of Trade of City of Chicago*, 90 F. (2d) 735 (C. C. A. 7th), certiorari denied, 299 U. S. 606; *Board of Trade of Kansas City* v. *Milligan*, 90 F. (2d) 835 (C. C. A. 8th), certiorari denied, 299 U. S. 610. See also *Pete* v. *Howell*, decided December 14, 1938 (C. C. A. 7th), holding a corner on the grain exchanges a violation of the Sherman Act.

[62] The record here indicates that extremely low prices for tobacco may have the effect of completely obstructing the movement of the commodity in commerce. See pp. 35–37, *supra*.

merce. See *United States* v. *The William*, Fed. Cas. 16,700, 28 Fed. Cas. 614; *Griswold* v. *The President of the United States*, 82 F. (2d) 922. To hold that the effect of the amount produced upon the amount shipped is not direct would be "to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum." *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 41.

Cases under the Antitrust laws demonstrate that Congress may exercise its commerce power over intrastate transactions because of their effect upon the supply and price of goods moving into interstate commerce. *Standard Oil Co. (Indiana)* v. *United States*, 283 U. S. 163; *Coronado Co.* v. *U. M. Workers*, 268 U. S. 295; *United States* v. *Patten*, 226 U. S. 525; *Swift and Company* v. *United States*, 196 U. S. 375, 397; *United States* v. *Trenton Potteries*, 273 U. S. 392. In the *Standard Oil* case, *supra*, the Court declared (p. 169):

> Moreover, while manufacture is not interstate commerce, agreements concerning it which tend to *limit the supply or to fix the price* of goods entering into interstate commerce, or which have been executed for that purpose, are within the prohibitions of the Act. [Italics supplied.]

In the second *Coronado* case the Court ruled that "while the mere reduction in the supply of an article to be shipped in interstate commerce by the

illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the 'intent of those unlawfully preventing the manufacture or production is shown to be to *restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets*, their action is a direct violation of the Antitrust Act.'" (Italics supplied.) *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 40. The existence of a direct effect in fact upon interstate commerce plainly takes the place of the intention to restrain such commerce found necessary in the *Coronado* case.[63] *Labor Board* v. *Jones & Laughlin, supra; Santa Cruz* v. *Labor Board*, 303 U. S. 453; *Stafford* v. *Wallace*, 258 U. S. 495, 520.

The purpose of the Sherman Act is to prevent private restrictions upon the supply and price in interstate commerce because Congress regarded such restrictions as harmful to such commerce. With respect to the basic farm commodities, Con-

[63] There is a close parallel between the second *Coronado* case and the case at bar. In the one, the justification for Federal control is the effect upon commerce of a stoppage of production; in the other, it is the effect upon commerce of overproduction. In the one, the exercise of Federal power was occasioned by conditions which concerned production of an insignificant portion of the country's coal resources, coupled with a possible slight effect upon price. In the other, Federal power has been exercised by reason of the fact that conditions governing the supply of tobacco present a constant threat to the entire fabric of interstate commerce in that commodity.

gress now, with good reason, regards excessive supply and low prices as detrimental to commerce. The Antitrust Acts and the Agricultural Adjustment Act of 1938 reflect the fact that differing economic conditions call for different remedies. But both have the same objectives, the protection and promotion of interstate commerce. There can be no difference in constitutional power over intrastate transactions where the purpose is to protect interstate commerce against high prices and a limited supply and where the purpose is to protect it against low prices and an oversupply. It is the function of Congress to choose between economic theories and to determine the particular policy deemed necessary for the protection of interstate commerce against whatever evils affect it. *Northern Securities Co.* v. *United States*, 193 U. S. 197, 337; *Nebbia* v. *New York*, 291 U. S. 502; *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 319, 332 (dissenting opinions).

These decisions demonstrate that it is proper for Congress to regulate intrastate transactions because of their effect upon price and supply in interstate commerce. The effects of excessive marketing upon price and supply in such commerce were stated by Congress to be the reason for enacting the quota regulations in the Agricultural Adjustment Act of 1938. The purpose of the Act is to relieve interstate and foreign commerce from the disruptive effect of marketing more tobacco than can be absorbed at fair prices. A statute which was

esigned to and which did protect and foster inter-
tate commerce by these means would be valid no
natter whether its primary impact was on inter-
tate or intrastate transactions, on marketing, or
n production.

4. *The cases relied on by appellants are not controlling*

(a) UNITED STATES V. BUTLER AND CASES UNDER THE KERR-SMITH TOBACCO ACT

The Agricultural Adjustment Act of 1933 (48
tat. 31) provided for the payment of benefits to
armers who would agree to reduce acreage and for
ne imposition of processing taxes in order to pro-
ide funds for the benefit payments. A majority of
his Court held in *United States* v. *Butler*, 297 U. S.
that this constituted a regulation of production
ather than an exercise of the power to tax and
rovide for the general welfare of the United
tates. The provisions of the 1933 Act there under
eview did not purport to regulate interstate or
oreign commerce, and it was not claimed that they
ere valid under the commerce power (pp. 63–64).
The present Act regulates marketing, not pro-
uction. It is based on the determination of Con-
ress that marketing both constitutes and directly
ffects interstate and foreign commerce and there
ample evidence in the record to confirm this find-
g. The purpose and effect of the Act are to
abilize marketing and price, both legitimate
bjectives under the commerce clause. Cf. *Currin* v.
Wallace, supra. Thus, the present Act does not

regulate the subject matter found in the *Butler* case to be beyond the scope of federal power.

Even if the present statute be deemed a regulation of intrastate activity or production, it would not follow, because such a regulation could not be based upon the power to tax and provide for the general welfare that it does not come within the commerce power. Under the commerce power Congress may regulate incidents of production which directly affect interstate commerce (see pp. 96–98, *supra*). Any language in the *Butler* case susceptible of the construction that under no circumstances or under any granted power could such intrastate acts be regulated must be deemed to have been qualified by the subsequent decisions of this Court to the contrary in the Labor Board cases.[84]

It is clear from *Hill* v. *Wallace*, 259 U. S. 44 and *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, that Congress may utilize the commerce power to regulate subjects which it may not reach under the taxing power. The former case held invalid the Futures Trading Act (42 Stat. 187) which imposed prohibitive taxes on certain types of dealing in grain futures. The latter case sustained the constitutionality of the Grain Futures Act (42 Stat. 998), which contained an identical system of regulation under the commerce clause.

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[84] *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1; *Santa Cruz Co.* v. *Labor Board*, 303 U. S. 453; *Consolidated Edison Co.* v. *Labor Board*, Oct. Term, 1938, No. 19, this term.

. The Kerr-Smith Tobacco Act (48 Stat. 1275, 7 U. S. C. § 751) was a companion measure to the provisions of the Agricultural Adjustment Act of 1933 held invalid in the *Butler* case, and was repealed shortly after the decision in that case (49 Stat. 1106). The regulations in the two statutes were interconnected, in that farmers who carried out contracts with the Secretary of Agriculture to adjust production under the 1933 Adjustment Act were exempted from the Kerr-Smith Act. The cases holding the latter act invalid are grounded entirely upon the *Butler* case. *Robertson* v. *Taylor,* 90 F. (2d) 812 (C. C. A. 4th); *Glenn* v. *Smith,* 91 F. (2d) 447 (C. C. A. 6th), certiorari denied, 301 U. S. 691. See also *United States* v. *Moor,* 93 F. (2d) 422 (C. C. A. 5th) certiorari denied, 303 U. S. 663, a similar decision under the Bankhead Act. These decisions can, of course, carry no greater authority than the decision of this Court upon which they rely.

(b) CASES SUSTAINING STATE TAX OR REGULATORY STATUTES

Many of the cases cited by appellants hold only that state tax or regulatory statutes are constitutional (*Kidd* v. *Pearson,* 128 U. S. 1; *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245; *Oliver Iron Co.* v. *Lord,* 262 U. S. 172; *Champlin Rfg. Co.* v. *Commission,* 286 U. S. 210; *Coe* v. *Errol,* 116 U. S. 517; *Crescent Oil Co.* v. *Mississippi,* 257 U. S. 129). That such cases do not establish a limitation upon the power of Congress is clear. As this Court said

in *Santa Cruz Co.* v. *Labor Board,* 303 U. S. 453, 466:

> Nor are the cases in point which are cited by petitioner with respect to the exercise of the power of the State to tax goods, which have not begun to move in interstate commerce or have come to rest within the State, or to adopt police measures as to local matters. In that class of cases the question is not with respect to the extent of the power of Congress to protect interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with that paramount authority. *Bacon* v. *Illinois,* 227 U. S. 504, 516; *Stafford* v. *Wallace, supra,* p. 526; *Minnesota* v. *Blasius,* 290 U. S. 1, 8.

(C) HAMMER V. DAGENHART

Hammer v. *Dagenhart,* 247 U. S. 251, denied to Congress the power to prohibit the interstate shipments of products from factories employing child labor. The case has been treated in later decisions (*Brooks* v. *United States,* 267 U. S. 432; *Ky. Whip & Collar Co.* v. *I. C. R. Co.,* 299 U. S. 334) as holding the Child Labor Act invalid "because it was not really a regulation of interstate commerce but a Congressional attempt to regulate labor in the state of origin, by an embargo upon its external trade." Since in the act here under consideration Congress is not controlling production, but regulating interstate commerce in order to further orderly marketing and insure reasonable

ces in such commerce itself (see pp. 86–88, *ra*), the same comment cannot legitimately be de. For this reason *Hammer* v. *Dagenhart* is tinguishable.

But we do not believe that in any real sense Child Labor Act was a mere regulation of or in the States. The statute in terms pro- ited interstate shipments; it thus regulated in- state commerce itself, and nothing else. Four tices of this Court thought at the time that h a statute was a regulation of interstate com- ce within the meaning of the Constitution. believe that they were correct, and that their ws have been given effect by the Court in sub- uent decisions. *Brooks* v. *United States,* 267 S. 432; *Ky. Whip & Collar Co.* v. *I. C. R. Co.,* U. S. 334; cf. *Labor Board* v. *Jones & Laughlin,* U. S. 1.

The majority of the Court in *Hammer* v. *Dagen- t* advanced a number of reasons why the prohi- on of the interstate transportation of child-made ds was not a regulation of interstate commerce. will consider each in turn.

1) The majority stated that Congres did not e the power to prohibit the interstate movement "ordinary" or "harmless" commodities (pp. -272). A similar contention was held "inad- sable" in *Ky. Whip & Collar Co.* v. *I. C. R. Co.,* U. S. 334, 347–348, and since it is inconsistent

with that case as well as others, we can assume that to that extent *Hammer* v. *Dagenhart* is no longer law.

(2) As a corollary to the argument just considered, the opinion suggested that the power to restrict interstate transportation may be exercised only when necessary to avoid "the accomplishment of harmful results" (p. 271), and that the Child Labor Act can not be deemed to fall within that category. This argument appears to be no more than a restatement of the first; it is clear from the opinion that only "harmful commodities" (such as impure food, lottery tickets, liquor, and women) were considered capable of producing "harmful results." The opinion does not find that the use of child labor and dissemination of its effect through the channels of interstate commerce is not an evil, but rather suggests the contrary (p. 275). Thus the decision could hardly have been justified if the phrase "harmful results" had been given its ordinary or natural meaning. Accordingly, even if the "harmful result" limitation be read into the commerce clause—and we submit that the Constitution does not permit of that construction—the ruling of the Court was not warranted. This Court has so held with respect to a strictly comparable evil—the use of prison labor. Cf. *Ky. Whip & Collar Co.* v. *I. C. R. Co., supra.*

(3) The opinion holds that Congress may not "control interstate commerce" in order to prevent "unfair competition" between manufacturers in

tes with different standards of labor (p. 273). ce there can be no question as to the general er of Congress to prevent unfair competition nterstate commerce, the rationale of the opinion t either be that the use of cheap child labor d not be declared unfair, or that an unfair prac- occurring during the course of the production goods to be shipped into interstate commerce d not be subjected to the commerce power no ter how great its effect upon interstate compe- n. The opinion does not seek to establish the of these propositions; and the second is incon- ent with the doctrine that Congress may protect rstate commerce against injury "no matter t the source of the dangers which threaten it." *nd Employers' Liability Cases,* 223 U. S. 1. 51; *or Board* v. *Jones & Laughlin,* 301 U. S. 37. s principle has been applied not only to labor tions in productive industry (*Santa Cruz Co. Labor Board, supra*), but also and more fre- ntly to intrastate acts which give an advantage interstate competition to persons engaged in ctices regarded by Congress as unfair or other- against public policy (*Swift and Company Inited States,* 196 U. S. 375; *United States* v. *en,* 226 U. S. 525; *Northern Securities Co.* v. *ted States,* 193 U. S. 197; *Coronado Co.* v. *M. Workers,* 268 U. S. 295; *Stafford* v. *Wallace,* U. S. 495; *Van Camp & Sons* v. *Am. Can Co.,* U. S. 245; *American Can Co.* v. *Ladoga Can- Co.,* 44 F. (2d) 763, certiorari denied, 282 U. S.

899.[as] Cf. *Houston & Texas Ry.* v. *United States*, 234 U. S. 342.

(4) The opinion in *Hammer* v. *Dagenhart* holds that "a statute must be judged by its natural and reasonable effect" (p. 275), and that since the prohibition against interstate shipment of child-made goods necessarily affected child labor it was not a regulation of interstate commerce. We have pointed out above (*supra*, pp. 67–73) that the constitutionality of a regulatory statute is to be determined by what it regulates, not by what it affects. We will say no more about this question here. We believe that the dissenting opinion clearly reveals the unsoundness of the ruling of the majority, and now represents the law of the Court.

(5) The majority further holds that the regulation of labor conditions in manufacturing enterprise is a purely local matter, that accordingly it falls within the power reserved to the States, and that the Tenth Amendment precludes Congress from regulating interstate commerce so as to invade that field. The Labor Board cases, establish-

[as] The *Ladoga Canning* case permitted a packing company to recover triple damages under Sections 2 and 4 of the Clayton Act because the defendant manufacturer sold cans to a packing company, a competitor of the plaintiff, at discriminatory prices. The court upheld this application of the statute although over 99% of the sales of the defendant to the favored concern were intrastate (see p. 770), upon the ground that the price discrimination in the intrastate sales of cans affected interstate commerce in the goods manufactured therefrom.

ing that Congress may regulate labor relations in industry when they directly affect interstate commerce, are inconsistent with the premise of this argument. Moreover, the Child Labor Act did not regulate intrastate transactions affecting interstate commerce, but regulated interstate transportation itself. The opinion thus seems to hold that an exercise of the commerce power may invade the reserved rights of the States under the Tenth Amendment. Since that Amendment reserves to the States only the powers not granted to Congress, such a construction would be contrary to its plain terms.[66] This subject is considered more fully below, *infra*, pp. 120–138.

None of the reasons advanced in support of the decision in *Hammer* v. *Dagenhart* has a sound basis.[67] The effect of the decision was to establish a limitation upon the commerce power which is contained nowhere in the Constitution, and is contrary to the nature of the grant as defined in cases running from *Gibbons* v. *Ogden*, 9 Wheat. 1, 196,

[66] The majority opinion seems to amend the Tenth Amendment by inserting therein the word "expressly" (p. 275); the Court states that "the powers not expressly delegated to the national government are reserved" to the States and to the people. That the word "expressly" was intentionally omitted from the Amendment is shown by its history. See p. 125, *infra;* Story, *Commentaries*, Sections 1907–1908.

[67] If necessary, it would not be difficult to show that a statute designed to eliminate competitive advantages resulting from the use of child labor on commodities competing in interstate commerce had a legitimate "commerce purpose."

to the most recent decisions of this Court. *Ky. Whip & Collar Co.* v. *I. C. R. Co., supra; U. S.* v. *Carolene Products Co.*, 304 U. S. 144, 147; *Currin* v. *Wallace, supra.* The decision in *Hammer* v. *Dagenhart* created a no-man's land in which neither State nor Nation could function—just as would a holding in the instant case that Congress may not regulate the marketing of agricultural commodities in interstate commerce. The states are precluded by the commerce clause itself from prohibiting interstate shipment of child-made goods. Cf. *Leisy* v. *Hardin*, 135 U. S. 100. Under the decision in *Hammer* v. *Dagenhart* the power thus lost to the States did not pass to the Nation. The establishment of such a hiatus in governmental power is plainly contrary both to the letter and spirit of the Constitution. Story, *Commentaries*, Section 282; *Carter* v. *Carter Coal Co.* 298 U. S. 238, 326 (dissenting opinion of Mr. Justice Cardozo).

For these reasons it is respectfully submitted that this Court has abandoned the principles which governed the unfortunate decision of a bare majority of this Court in *Hammer* v. *Dagenhart* and that that case may no longer be regarded as an authority.

D. CONCLUSION

In *The Minnesota Rate Cases*, 230 U. S. 352, 398, quoting from *Gibbons* v. *Ogden*, 9 Wheat. 1,

195,[68] this Court declared with respect to the line of demarcation between federal and state power under the commerce clause:

> * * * The words "among the several States" distinguish between the commerce which concerns more States than one and that commerce which is confined within one State and does not affect other States. "The genius and character of the whole government," said Chief Justice Marshall, "seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. * * *"

Under this classical definition of the scope of the commerce clause, there can be no doubt as to the power of the federal government to deal with such major national economic problems as those which have long confronted American agriculture.

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[68] See also *Mayor of New York* v. *Miln*, 11 Pet. 102, 146; *The Daniel Ball*, 10 Wall. 557, 564; *Kidd* v. *Pearson*, 128 U. S. 1, 17; *Champion* v. *Ames*, 188 U. S. 321, 346; *Employer's Liability Cases*, 207 U. S. 463, 493, 507 (both majority and dissenting opinions). See Stern, *That Commerce which Concerns more States Than One*, 47 Harv. L. Rev. 1335.

II

THE MARKETING QUOTA PROVISIONS OF THE AGRICULTURAL ADJUSTMENT ACT DO NOT VIOLATE THE TENTH AMENDMENT

It has been shown that the marketing quota provisions of the Agricultural Adjustment Act are an exercise of the power of Congress to regulate interstate and foreign commerce. This disposes of appellants' argument that the Act violates the Tenth Amendment, which merely provides that:

> * * * The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Language could not express more clearly the thought that the Amendment does not reserve to the states any part of any power which is "delegated to the United States by the Constitution," nor indicate more plainly that the Amendment does not limit the scope of any power which is delegated to the United States. The Amendment has no independent operation. It comes into effect only after a determination that an Act of Congress is not authorized under the granted powers.

These propositions seem self-evident. But several relatively recent decisions of this Court are susceptible of being interpreted as giving the Amendment greater sweep than its language permits. Under these circumstances we deem it proper to call to the Court's attention both the

storical facts surrounding the adoption of the mendment and the long line of cases in which it s been construed as meaning only what it says.

THE HISTORY OF THE ADOPTION OF THE TENTH AMENDMENT

The first ten amendments are a close adaptation those proposed by Massachusetts in ratifying the onstitution.[69] At that time four States had rati-d. The opposition was strong and becoming in-easingly vocal in the states yet to act. The omis-on of a bill of rights was generally regarded as e most vulnerable point in the proposed charter.[70] ohn Hancock, president of the Massachusetts Con-ntion, accordingly introduced the proposed nendments "in order to remove the doubts and iet the apprehensions of gentlemen" (Elliot's ebates, II, 123). John Adams welcomed the pro-sal with enthusiasm; it would allay doubts, con-iate opposition, and serve to ease the path of rati-ation in the eight states which had not acted. illman considered them "peace-makers" (Elliot, , 123–124, 169). These predictions were fulfilled. outh Carolina, New Hampshire, Virginia, and ew York each ratified the Constitution but ex-essed their earnest hope for amendments; only

[69] The first of the nine recommendations of Massachusetts d: "That it be explicitly declared that all powers not ex-ssly delegated by the aforesaid Constitution are reserved the several states, to be by them exercised" (Elliot's De-es, I, 322).

[70] Warren, *The Making of the Constitution*, p. 769.

the North Carolina convention insisted upon amendments prior to ratification.[71]

The discussion in the ratifying convention confirms the plain meaning of the words of the Tenth Amendment, and indicates that the proponents wished merely to insure that the central government would be one of delegated powers. In Massachusetts Adams stated that the proposed amendment "removes a doubt which many have entertained" and made sure that "if any law made by the federal government shall be extended beyond the power granted by the proposed Constitution," it would be held unconstitutional (Elliot's Debates, II, 131). Jarvis agreed as to the desirability of the proposal, to "remove every doubt on this head" (*id.*, II, 153). In Virginia, Grayson thought, since there was a similar clause in the Articles of Confederation, it could not be "totally unnecessary" (*id.*, III, 449). Mason agreed, since the amendment would "remove our apprehensions" (*id.*, III, 442). Bloodworth, in North Carolina, urged the amendment because "every possible precaution

[71] Elliot's Debates, I, 325–332. It may be noted that only in Massachusetts and New Hampshire was the Tenth Amendment offered as an amendment (Elliot, I, 322, 326); in South Carolina, Virginia, and New York it was set forth as declaratory of the conventions' understanding of the construction of the Constitution (*id.*, I, 325, 327). Maryland ratified without attaching proposed amendments, but its convention addressed a statement to the people of that State, explaining that the Constitution was "very defective," and recommending various amendments, including one similar to the Tenth Amendment (*id.*, II, 547, 550).

should be taken when we grant powers" (*id.*, IV, 167). The delegates who opposed the amendment did so largely on the ground that it was unnecessary, if not dangerous.[72]

The anxiety for this declaratory rule of construction may be traced to two fears: that the national government might assert the right to exercise powers not granted, and that the states would be unable fully to exercise the powers which the Constitution had not taken from them. The first fear may be exemplified by Bloodworth of North Carolina, who warned that "without the most express restrictions, Congress may trample on your rights" (Elliott, IV, 167). So, too, Patrick Henry inveighed against the surrender of powers to the national government "without check, limitation, or control" (*id.*, III, 446). But perhaps the most frequently expressed purpose was to insure that the states should continue able to exercise the numerous powers which had *not* been granted to Congress. Grayson of Virginia "thought it questionable whether rights not given up were reserved" (*id.*, III, 449). Henry of Virginia thought ratification of the unamended constitution "the most absurd thing to mankind that ever the world saw—a government that has abandoned all its powers" (*id.*,

[72] Massachusetts: Varnum (Elliot, II, 78); Virginia: Nicholas, Randolph and Madison (*id.*, III, 450, 464, 600, 620, 626); North Carolina: Maclaine and Iredell (*id.*, IV, 140, 149); South Carolina: Pinckney (*id.*, IV, 315–316); Pennsylvania: Wilson and M'Kean (*id.*, II, 435–436, 540).

III, 446). Mason of Virginia asked, "I there any thing in this Constitution which secures to the states the powers which are said to be retained?" (*id.*, III, 441)."[13]

When the proposed amendments were introduced by Madison in the first Congress, "to give satisfaction to the doubting part of our fellow-citizens" (1 Annals of Congress 432), he viewed the Tenth Amendment as merely declaratory (1 Annals 441):

> I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the Constitution, that the powers not therein delegated should be reserved to the several States. Perhaps other words may define this more precisely than the whole of the instrument now does. I admit they may be deemed unnecessary; but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.

There was no other explanatory statement in the briefly recorded debate on this Amendment. But Madison in the course of debate on Hamilton's bank proposal, on February 2, 1791, when nine states had ratified the amendments which he had proposed, said (2 Annals 1897):

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[13] For the possible convenience of the Court, citations to additional discussion of the proposals which became the Tenth Amendment are: Elliot's Debates, II, 153, 540; III, 464, 588, 589, 622.

> Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws, or even the Constitution of the States.

Finally, any possibility of doubt must be removed when it is remembered that the adoption of the Tenth Amendment was accompanied by a deliberate refusal to reserve to the states all powers not "expressly" granted to the national government. This was the wording of Article II of the Articles of Confederation,[74] of the Massachusetts [75] and New Hampshire [76] proposals, of the South Carolina declaration,[77] and of the Maryland convention's statement to its electors.[78] New York referred to powers

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[74] "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States * * *"

[75] See footnote 69, *supra*.

[76] "That it be explicitly declared that all powers not expressly and particularly delegated by the aforesaid Constitution are reserved to the several states, to be by them exercised" (Elliot, I, 326).

[77] "This Convention doth also declare, that no section or paragraph of the said Constitution warrants a construction that the states do not retain every power not expressly relinquished by them, and vested in the general government of the Union" (*id.*, I, 325).

[78] "That Congress shall exercise no power but what is expressly delegated by this Constitution" (*id.*, II, 550).

"clearly" delegated."[79] Only Virginia, in its declaration, made no such qualification.[80] While Madison's proposals for new amendments were under consideration in Congress, Tucker and Gerry each moved to amend this proposal so as to reserve to the states the powers not *expressly* delegated; each motion was defeated (1 Annals of Congress 761, 767–768). Even the original reservation in the Articles of Confederation of powers not "expressly" delegated, it is to be noted, was intended by the Continental Congress to do no more than to preserve the autonomy of the states.[81] Whether or not a reservation to the states of powers not expressly delegated would have impaired the last clause of Section 8 of Article I, granting "necessary and proper" powers, it is plain that there was a deliberate choice of the Congress to except from the reservation to the states the powers granted to Con-

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[79] "* * * that every power, jurisdiction, and right, which is not by the said Constitution clearly delegated to the Congress * * * remains to the people * * * or to their respective state governments * * *" (*id.*, I, 327).

[80] "* * * that every power not granted thereby remains with them (the people) * * *" (*id.*, I, 327).

[81] Thomas Burke, writing to Governor Caswell from the Congress, on May 23, 1777, said the proposal originally "expressed only a reservation of the power of regulating the internal police, and consequently resigned every other power. It appeared to me that this was not what the States expected, and, I thought, it left it in the power of the future Congress * * * to make their own power as unlimited as they please." Burke accordingly proposed the Article which, after two days of spirited debate, was adopted 11–1, with one state divided. 7 Journals of Cont. Cong. 122–123.

gress by implication. This choice cannot be squared with any argument that appropriate federal powers cannot be exercised because of the operation of the Tenth Amendment.

In summary, the men who proposed the Tenth Amendment seem to have been clear that the Amendment was simply declaratory of the evident proposition that Congress could not constitutionally exercise powers not granted to it, and that these powers could continue to be exercised by the states. It was designed solely to allay extravagant fears such as those of Spencer of North Carolina, who felt that a clause as innocuous as that relating to the election of senators and representatives "strikes at the very existence of the states, and supersedes the necessity of having them at all" (Elliott's Debates, IV, 55). As Story has emphatically said (Story on the Constitution, secs. 1907–1908):

> This amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the Constitution. * * *
>
> It is plain, therefore, that it could not have been the intention of the framers of this amendment to give it effect, as an abridgement of any of the powers granted under the Constitution, whether they are express or implied, direct or incidental. Its sole design is to exclude any interpretation by which other powers should be as-

> sumed beyond those which are granted. * * * The attempts then which have been made from time to time to force upon this language an abridging or restrictive influence are utterly unfounded in any just rules of interpreting the words or the sense of the instrument. Stripped of the ingenious disguises in which they are clothed, they are neither more nor less than attempts to foist into the text the word "expressly;" to qualify what is general, and obscure what is clear and defined. * * *

B. THE JUDICIAL HISTORY OF THE AMENDMENT

The plain purpose of the Amendment has been confirmed by more than a century of constitutional history. The decisions of this Court have reiterated that the Tenth Amendment offers no independent limitation upon the powers granted to the United States but merely states the unquestioned principle that the central government is one of enumerated powers.

In 1808 in what, so far as we have been able to discover, is the first federal case interpreting the commerce clause, *United States* v. *The William*, Fed. Cas. No. 16,700, 28 Fed. Cas. 614, (see p. 51, *supra*), Judge Davis [82] stated with respect to the powers of the states that (p. 622):

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[82] Judge Davis (See note 37, p. 51, *supra*) was a delegate to the Massachusetts constitutional convention which first proposed the Tenth Amendment (see p. 121, *supra*). He was thus in a position to know personally what the amendment was intended to mean.

> * * * The general position is incontestible, that all that is not surrendered by the constitution, is retained. The amendment which expresses this, is for greater security; but such would have been the true construction, without the amendment.

The effect of the Tenth Amendment seems to have been considered for the first time by this Court in *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 325, where the Court said the principle, that "the sovereign powers vested in the state governments * * * remained unaltered and unimpaired, except so far as they were granted to the government of the United States," had been "positively recognized" by the amendment. Even Luther Martin, Attorney General of Maryland, arguing in *McCulloch* v. *Maryland,* 4 Wheat. 316, conceded that the amendment meant what it said, that it was "merely declaratory of the sense of the people" and designed to allay an apprehension which the federalists "treated as a dream of distempered jealousy" (4 Wheat., at 372, 374). Chief Justice Marshall's opinion agreed that the amendment "was framed for the purpose of quieting the excessive jealousies which had been excited" and that it left open the question "whether the particular power * * * has been delegated to the one government, or prohibited to the other" (4 Wheat., at 405, 406). Taney, as well, accepted this self-evident proposition. In *Gordon* v. *United States,* 117 U. S. 697, 705 (1864), he said: "The reserva-

tion to the States respectively can only mean the reservation of the rights of sovereignty * * * which they had not parted from."

This Court has continued to treat the Tenth Amendment as containing no limitation on the powers granted to the United States. In the *Lottery Case,* 188 U. S. 321, 357, it brushed aside the suggestion that this Amendment forbade the legislation because "the power to regulate commerce among the States has been expressly delegated to Congress." In *Northern Securities Co.* v. *United States,* 193 U. S. 197, 344–345, the majority opinion refused to entertain argument based on the Tenth Amendment which the defendants "strangely enough" raised; it could not "conceive how it was possible for any one to seriously contend" that the commerce power was limited by the state power to charter corporations.[83] The Court, speaking of the National Prohibition Act, in *Everard's Breweries* v. *Day,* 265 U. S. 545, 558, said "if the act is within the power confided to Congress, the Tenth Amendment, by its very terms, has no application, since it only reserves to the States 'powers not delegated to the United States by the Constitution'." In *Missouri* v. *Holland,* 252 U. S. 416, 432, the Court said that, to answer the question as to the validity of the Migratory Bird Treaty and act in view of the

[83] Only four justices joined in this opinion; the concurring opinion of Justice Brewer seems not to have gone so far. 193 U. S. at 363.

ights reserved to the States, "it is not enough to efer to the Tenth Amendment * * * because * * * the power to make treaties is delegated xpressly * * *." Again, in *United States* v. *Sprague*, 282 U. S. 716, 733, this Court said: "The Tenth Amendment was intended to confirm the nderstanding of the people at the time the Constiution was adopted * * *. It added nothing to he instrument as originally ratified * * *."

These cases show a consistent[*] and express ecognition that the Tenth Amendment means just vhat it says. However, the clarity of these decions has been obscured by several of the recent pinions of this Court. Thus, in *Hopkins Savings* 1ss'n. v. *Cleary*, 296 U. S. 315, the Court held pp. 338–339) that "The destruction of associaions established by a state is not an exercise of ower reasonably necessary for the maintenance by

[*] We are not here concerned with the ebb and flow of the states' rights" doctrine (summarized in Corwin, *The Commerce Power versus States Rights*), but with those cases in vhich the Court has considered the specific application of the Tenth Amendment to powers assumed to have been granted to he national government. *The Collector* v. *Day*, 11 Wall. 113, elies upon the Tenth Amendment, but the decision seems to ave been placed ultimately upon the supposed scope of the ederal taxing power. In *Kansas* v. *Colorado*, 206 U. S. 46, 0–90, the Court rejected the argument of the United States nat powers not delegated to it could be exercised if they ere beyond the competence of the states: the Tenth Amendent, "seemingly adopted with a prescience of just such contion," made "absolutely certain" that the national governent should not "attempt to exercise powers which had not een granted."

the central government of other associations created by itself in furtherance of kindred aims." This seems to be a construction of federal powers; as such there need be no quarrel with it. But the opinion appears to view this conclusion as based upon the Tenth Amendment, independently of the scope of the powers granted to the United States (pp. 335, 336). In *United States* v. *Butler*, 297 U. S. 1, the Court held that the Agricultural Adjustment Act tax was not a true tax, because the proceeds were earmarked for benefit contracts (p. 61), and that the payments to farmers were not merely expenditures under the general welfare clause, because they were coupled with coercive conditions in effect regulating agricultural production (pp. 71, 73). The opinion, however, seems further to decide that, "wholly apart 'from the scope of the general welfare clause,' the act invades the reserved rights of the states" (p. 68). Similarly, in *Ashton* v. *Cameron County Dist.*, 298 U. S. 513, 527, the Court held Chapter IX of the Bankruptcy Act invalid, not because the bankruptcy power did not extend to the public debtors there specified, but because, if the Act were sustained, "the sovereignty of the State, so often declared necessary to the federal system, does not exist" (p. 531).[85] Indeed, the

[85] The decision is not in terms placed upon the Tenth Amendment. But its analysis seems basically similar to the other cases, in that the scope of the federal power was considered largely irrelevant and the validity of the Act was judged solely on the basis of the powers taken to be reserved to the States.

opinion assumes "that the enactment is adequately related to the general 'subject of bankruptcies'" (p. 527). But cf. *United States* v. *Bekins*, 304 U. S. 27. Finally, in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, and *Helvering* v. *Davis*, 301 U. S. 619, the Court sustained Titles IX, VIII, and II of the Social Security Act in opinions which not only held the titles within the powers granted to the federal government but in addition held that they did not violate the Tenth Amendment. The circumstances relied upon to show the latter conclusion might, by the traditional analysis, more appropriately have served to show that the Titles were a valid exercise of the federal power to tax and to spend for the general welfare.[86]

In none of these opinions did the Court explicitly announce a departure from its historic treatment of the Tenth Amendment. The government does not believe that, merely because of implications derived from the form in which these opinions have been cast, so important a constitutional doctrine should be taken to have been overruled *sub silentio*. Particularly is this the case when other, and contemporaneous, decisions retain the accepted interpretation of the Tenth Amendment. In *Ashwander* v. *Valley Authority*, 297 U. S. 288, the Court

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[86] A somewhat similar approach may be indicated in *Cincinnati Soap Co.* v. *U. S.*, 301 U. S. 308, 312, where the Court said, "The Tenth Amendment is without application, since the powers of the several states are not invaded or involved."

refused to consider objections raised under the Tenth Amendment to the sale of power by the Government. It said (pp. 320–331): "To the extent that the power of disposition is thus expressly conferred, it is manifest that the Tenth Amendment is not applicable * * *. The question is as to the scope of the grant and whether there are inherent limitations * * *." In *Labor Board* v. *Jones & Laughlin,* 301 U. S. 1, and in *Associated Press* v. *Labor Board,* 301 U. S. 103, the Court, having determined the National Labor Relations Act as applied to be an exercise of the commerce power, found it unnecessary even to discuss the Tenth Amendment despite persistent reliance upon it by counsel and dissenting justices.[87] Similarly, in *Sonzinsky* v. *United States,* 300 U. S. 506, the Court saw no occasion to consider petitioner's argument based on the Tenth Amendment (p. 508), but contented itself with the decision that the firearms tax was an exercise of the taxing power. In *Wright* v. *Union Central Ins. Co.,* 304 U. S. 502, 516, this Court declared at the last term that: "In view of our decision that the law is within the bankruptcy power, scant reliance can be placed on the Tenth Amendment." Finally, in *United States*

[87] The effect of the Tenth Amendment was urged by the dissenting opinion in the *Jones & Laughlin* case (301 U. S. at 97) and by respondents in the *Associated Press* case (301 U. S. at 105), in *Labor Board* v. *Freuhauf Co.,* 301 U. S. 49, 51, and in *Labor Board* v. *Clothing Co.,* 301 U. S. 58, 71.

California, 297 U. S. 175, 184, the Court declared, a slightly different connection, that "the sovergn power of the states is necessarily diminished the extent of the grants of power to the federal vernment."

In none of these recent cases has the Governent presented any detailed analysis of the origin the Tenth Amendment or of the decisions under ; in none has a considered or detailed argument en offered in support of the position contrary that of the Government; in none has the Court pressly considered the basis for its occasional sumption that the Tenth Amendment operates an independent limitation upon the federal owers. Certainly, if this Court is to abandon its aditional position, in apparent disregard of the tention of the framers, the importance of the uestion requires that this choice should not be ade without full discussion.

C. CONCLUSION

The argument of appellants, so far as it is based n the Tenth Amendment, must of necessity begin ith the premise that the power in question is reerved to the states alone and therefore cannot be xercised or affected by the central government. his, it is to be noted, assumes that the scope and xistence of an exclusive state power can be deermined without reference to the federal powers.

This assumption is contradicted by the whole course of our constitutional history. Judgment upon the scope of the federal power cannot fail to be clouded if the issue, in part or in whole, be resolved in advance by the assumption that the same or a related power belongs affirmatively or exclusively to the States. Recognition of the importance of protecting the independence of the States would thus imperceptibly be transmuted into vitiation of powers which have in fact been granted to the Federal Government.

The constitutional grant of federal power is, then, the measure of the power granted—not some hypothetical reservation of a specific power to the states. This principle of constitutional interpretation, which is a part of our dual system of government, is in no way inconsistent with such a system. Thus, the fact that ours is a federated system of government may have a bearing in resolving difficult questions of construction as to the scope of a granted power.

As in the present case, the denial of a specific power to the states should be a weighty factor in determining whether or not the power in question has been granted to the federal government. Still another principle has developed in cases dealing with the scope of the federal taxing power, in which it has been held that the power may not be used so as to destroy or burden the essental in-

strumentalities or activities of the state governments. This doctrine has not been applied to other powers of the Congress. *United States* v. *California,* 297 U. S. 175, 184–185. Indeed, since the Constitution creates a federal government primarily by granting certain plenary powers and withholding others, the doctrine applied in the tax cases must necessarily be an exceptional one.

But this exceptional doctrine, even were it applicable, in no way impairs the basic principle that the question must always be whether or not the power has been granted to the United States. If the powers and rights of the states were made the first inquiry, it would result in an exaggerated form of that "perfect solecism which affirms" that a national government should exist with paramount powers, and yet that in the exercise of those powers it should not be supreme" (Story, *Commentaries,* II, Sec. 1837).

The plain meaning of the language of the Tenth Amendment, the circumstances of its adoption, and a century of constitutional litigation support the approach represented by the *Ashwander* and *Jones & Laughlin* opinions. We respectfully submit that it should be adopted in this case. Any other rule must condemn constitutional interpretation to a perpetual servitude to sophistry and contradiction: neither layman nor scholar can ever be expected to contrive a satisfactory touchstone by which to

determine what powers granted to the national government may not be exercised because reserved to the states as a power "not delegated to the United States."

III

THE MARKETING QUOTA PROVISIONS OF THE AGRICULTURAL ADJUSTMENT ACT DO NOT VIOLATE THE FIFTH AMENDMENT

Appellants argue that the marketing quota provisions of the Act violate the due process clause in the Fifth Amendment (1) because they are vague and indefinite, and (2) because they are retroactive in effect as applied to the 1938 crop, which was planted and harvested before the quotas were established. Appellants do not suggest in their brief or assignment of errors that the Act is arbitrary, capricious or unreasonable (except in the above respects), or is not related to the object sought to be attained. Accordingly, before examining the general question as to the validity of the statute under the due process clause, we shall first consider the two specific objections raised by appellants.

A. THE PROVISIONS OF THE ACT ARE NOT SO VAGUE AND INDEFINITE AS TO VIOLATE DUE PROCESS OF LAW

Appellants contend that the Act is invalid for indefiniteness because farmers cannot tell from the statute itself what their quotas are to be.

Inasmuch as the Act does not penalize farmers for marketing tobacco in violation of the general statutory standards, but only for marketing quantities in excess of specific allotments administratively determined under such standards (Sec. 314), this objection is untenable. The principle that "a penal statute * * * must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties" (*Connally* v. *General Const. Co.*, 269 U. S. 385, 391; *Champlin Rfg. Co.* v. *Commission*, 286 U. S. 210, 242) does not apply to statutory provisions which are implemented by specific administrative regulations.

Any unfairness which may be inherent in a vague penal law results from the inability of a person to tell whether or not he is acting unlawfully, and thus subjecting himself to punishment. When penalties are imposed only for violation of specific administrative orders, persons know when they act precisely what they are forbidden to do, irrespective of how indefinite the grant of authority to the administrative agency may be. The generality of the delegation of power to the administrative body affords no reason for applying the rule against indefinite penal statutes.

In each of the cases in which this Court has held penal laws invalid for indefiniteness, the penalty was imposed for violating the statute, not an ad-

ministrative order issued under it.[88] In *Champlin Rfg. Co.* v. *Commission, supra,* this Court indicated that the objection to vague statutes does not apply to those implemented by definite administrative rulings before penalties are imposed. The Court of Appeals of New York expressly so held in *Long Island R. R. Co.* v. *Dept. of Labor,* 256 N. Y. 498, 514, distinguishing *Connally* v. *General Const. Co., supra,* on this very ground. Cf., also, *United States* v. *Cohen Grocery Co.,* 255 U. S. 81, and *Highland* v. *Russell Car Co.,* 279 U. S. 253, cases involving different sections of the Lever Act.

Appellants' argument confuses the requirements of the due process clause as to definiteness in penal statutes with the test to be applied to legislative action to determine whether the legislative body has abdicated its functions by delegating unfettered authority to administrative agencies. The first relates only to the provisions of a statute or order which itself tells the individual citizen just what he may not do. The second is concerned only with whether any standard has been laid down to guide administrative action. The same definiteness is

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[88] *International Harvester Co.* v. *Kentucky,* 234 U. S. 216; *United States* v. *Cohen Grocery Co.,* 255 U. S. 81; *Small Co.* v. *Sugar Ref. Co.,* 267 U. S. 233; *Connally* v. *General Const. Co.,* 269 U. S. 385; *Cline* v. *Frink Dairy Co.,* 274 U. S. 445; *Smith* v. *Cahoon,* 283 U. S. 556; *Champlin Ref. Co.* v. *Commission,* 286 U. S. 210 *Herndon* v. *Lowry,* 301 U. S. 242.

plainly not required in the two situations. General grants of authority to administrative bodies have uniformly been upheld so long as an intelligible policy to guide the administrative agency has been established (see pp. 170–175, *infra*). That this Act does not contain an invalid delegation of legislative power will be shown below. (See Point IV, *infra*, pp. 160–175)

Here there is no indefiniteness whatsoever as to how much tobacco each farmer may market. This quantity is prescribed in an exact number of pounds by the administrative officials; and not until such a quota had been prescribed could any penalty be imposed, for until such time there would be no quota to exceed. Thus, the claim that the statute violates the Fifth Amendment because of the indefiniteness of the quota provisions is utterly without foundation.

B. APPLICATION OF THE ACT TO THE 1938 TOBACCO CROP DOES NOT VIOLATE THE FIFTH AMENDMENT

Appellants contend that the marketing quotas for the marketing year 1938–1939 were retroactive and accordingly violate due process of law inasmuch as the 1938 crop was planted, grown, and harvested before the quotas were allotted to individual farms. The short answer to this argument is that the Act imposes penalties only for excessive amounts *marketed* after individual quotas are prescribed, not for the quantity produced before that time.

The facts relating to this phase of the case are as follows: The bill which was eventually enacted as the Agricultural Adjustment Act of 1938 provided for the fixing of tobacco marketing quotas in substantially the same terms as those of the Act as it was finally passed. This bill was approved by committees of the House and Senate in November 1937 (S. Rep. 1295, Nov. 22, 1937; H. R. Rep. 1645, Nov. 27, 1937, 75th Cong., 1st Sess.). Appellants began to arrange for the planting of their crop in December 1937, planting the tobacco seedbeds at that time (R. 45). The Act was approved by the President on February 16, 1938. On February 18 the Secretary of Agriculture issued his proclamation that the total supply of tobacco exceeded the reserve supply level (R. 40). On March 12, 1938, a referendum was held, and on March 25 the Secretary proclaimed the result of the referendum approving the fixing of marketing quotas for flue-cured tobacco by a vote of 250,095 to 35,253 (R. 41).

The tobacco was transplanted from the seedbeds beginning in the middle of March (R. 45) and harvested in June and July (R. 46). The tobacco was cured and graded on the farm prior to marketing. The markets in south Georgia and Florida opened about August first (R. 45). On July 22, the Secretary announced the apportionment of the national quota among the states (R. 41), and shortly before

the opening of the markets, notice of the allotment for each farm was given to the individual appellants (R. 45). Thus, although appellants may not have known exactly what their individual marketing quotas would be when they grew the tobacco, they did know what those quotas were before marketing it.

It is thus plain that there was no retroactive operation of the statute in applying it to 1938 marketings. Since the Act was passed five and a half months before the marketing season began, it cannot seriously be urged that the law itself applied retroactively. The substance of appellants' contention is merely that the allotments were retroactive because they were made after the farmers had expended considerable sums in raising the crop. But the quotas apply only to acts occurring after their promulgation—to the marketing of tobacco, not its production—and accordingly do not operate retroactively.

This Court has frequently held that "a statute is not retroactive merely because it draws upon antecedent facts for its operation." *Lewis* v. *Fidelity*, 292 U. S. 559, 571; *Reynolds* v. *United States*, 292 U. S. 443, 449; *Cox* v. *Hart*, 260 U. S. 427, 435; *Mugler* v. *Kansas*, 123 U. S. 623; *In re Rahrer*, 140 U. S. 545, 564; *United States* v. *Freight Ass'n*, 166 U. S. 290; *New York Cent. R. R.* v. *United States*, No. 21, 212 U. S. 500; *Chicago & Alton R. R. v. Tranburger*, 238 U. S. 67; *Jacob Ruppert* v.

Caffey, 251 U. S. 264, 301; *Samuels* v. *McCurdy*, 267 U. S. 188, 193. This statute does not even have such an effect.

In the *New York Central* case, defendant railroad was indicted for paying a rebate contrary to the terms of the Elkins Act. The contract for the rebate had been made and the goods transported in interstate commerce prior to the passage of the Elkins Act; but the rebate was not actually given until after the law was passed. The Court held that since the rebate was given after the passage of the Act, to apply the Act to the rebate was not to give it retroactive operation regardless of when the contract was made or the goods transported.

In many of the above cases the charge was made that application of the statute in question to property rights previously established would cause great financial injury because of expenses previously incurred. The contention that this invalidated the statute (and this is the basis of appellants' claim here) has been uniformly rejected. In *Mugler* v. *Kansas, supra*, a state law prohibiting the manufacture and sale of intoxicating liquor was upheld both as applied to factories lawfully built at great expense and to beer lawfully acquired before the passage of the law—although the investment in such property might be completely destroyed as a result of the statute. In *Ruppert* v. *Caffey, supra*, application of the Volstead Act to beer on hand at the time of passage of the law was sustained, although the value of the property was

thus destroyed. Cf. *In re Rahrer, supra.* In *Samuels* v. *McCurdy, supra,* a state statute prohibiting the possession of intoxicating liquors was held constitutionally applicable to liquor possessed before the statute was passed, although the value of the liquor was thus destroyed. In *Chicago & Alton R. R.* v. *Tranbarger,* 238 U. S. 67, a statute imposing penalties upon a railroad for failure to maintain openings through its road-bed for drainage purposes was held valid as applied to an embankment lawfully built without such openings before the passage of the Act.

These principles have been applied repeatedly in upholding the application of statutes to previously existing continuing contracts. *Norman* v. *B. & O. R. Co.,* 294 U. S. 240, 306; *Holyoke Power Co.* v. *Paper Co.,* 300 U. S. 324; *Louisville & Nashville R. R.* v. *Mottley,* 219 U. S. 467; *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211; Phila., *Balt. & Wash. R. R.* v. *Schubert,* 224 U. S. 603. In the *Norman* case the Court said (pp. 307–310):

> This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of

dominant constitutional power by making contracts about them.

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* * * There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt. * * * The power of the Congress in regulating interstate commerce was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. The reason is manifest. To subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place to this extent the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of the Congress so much of the field as they might choose by "prophetic discernment" to bring within the range of their agreements. The Constitution recognizes no such limitation.

Appellants here are not even deprived of any contract rights by the regulation in question. No contracts to sell tobacco subsequently grown are shown to have been in effect before the law was passed or the allotments made. Nor are they deprived of any physical property. At most the statute takes from them an expectation that all of the crop planted and harvested could be sold, an expec-

tation upon which they had based certain expenditures. But such an expectation is not entitled even to the protection of a contract right. As the Court declared in the *Holyoke Water Power* case, *supra* (300 U. S., at 341):

> * * * But the *disappointment of expectations* and even the frustration of contracts may be a lawful exercise of power when expectation and contract are in conflict with the public welfare. "Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity." *Norman* v. *Baltimore & Ohio R. Co., supra,* pp. 307, 308. [Italics supplied.]

The loss of the right to sell tobacco after legally producing it is precisely the same in kind as the loss of the right to sell beer after legally acquiring it involved in the *Mugler, Rahrer,* and *Ruppert* cases. Such distinction as there may be between the two situations is one of degree. In the latter cases the loss of the value of the factories or the property concerned was total, and, as far as the statute was concerned, final; here it is only fifty *percent* of the value of such part of the excess as the farmers may choose to market. Moreover, the reasonable expectation of Congress was that not only would the reduction in the amount marketed increase the total return to growers for the tobacco sold but that the growers could, if they should

choose, make fully adequate provision for retaining any excess for later sale either within a later quota or free of quota restriction. See p. 64, *infra.*

There is peculiar appropriateness in applying the principle that a Federal regulation of commerce may validly disappoint an expectation, where as in this case, the regulation is designed to increase—and apparently has increased—the total value of the crop sold by an amount far exceeding the amount of any penalties paid. The record shows that as compared with all former years, despite the penalties paid for excess marketings, the return to farmers in Georgia and Florida for their 1938 crop was greater by almost two million five hundred thousand dollars than the return they had received for any previous crop. The value of the crop to the growers in those states was approximately $21,700,000 in 1938 (R. 46); it was $18,898,000 in the next best year, 1936, and in 1937 $17,469,000.[89] The average price in 1938, 20.3¢ per pound,

[89] The following table compares the figures for Georgia and Florida between 1928 and 1937 as computed from Table 2c (R. 55), with the figures for 1938 as shown at and computed from R. 46:

Year	Production	Price per pound	Farm value
	1,000 pounds	*Cents*	*1,000 dollars*
1928	87,329	12.8	11,189
1929	93,006	18.4	17,098
1930	109,071	9.9	10,827
1931	63,280	6.4	4,050
1932	13,275	10.5	1,388
1933	60,946	11.3	6,913
1934	34,970	18.8	6,584
1935	76,600	18.2	13,927
1936	89,550	21.1	18,898
1937	88,047	19.8	17,469
1938	107,000	20.3	21,730

was higher than that in any previous year, except 1936. And these favorable consequences were not achieved by any drastic curtailment of the amount produced. On the contrary, the total crop amounted to 107 million pounds. This greatly exceeded the amount marketed in Georgia and Florida in any previous year, except 1930 and in that year a crop of 109 million pounds brought the Georgia and Florida growers over ten million dollars less than the value of their 1938 crop. Even after the penalties of $374,000 (R. 46) paid by growers in the area because of excess marketings are subtracted from the value of the crop to the farmers, the amount they received in 1938 remains substantially higher than that received in any previous year. We think it not unfair to assume that the program of which appellants complain was in large part responsible for these increased returns to the growers. The price for the 1938 crop was enhanced not only because of the existence of a national marketing quota in that year but also because of buyers' knowledge that the Act might prevent prices paid in 1938 from causing excessive marketings in subsequent years (see pp. 34–35, *supra*).

It seems plainly evident that the marketing restrictions applied in 1938 not only did not result in loss to the growers, but brought them increases in the returns from their tobacco crop far exceeding the amount of any penalties they paid. It requires considerable hardihood to contend that such a consequence should be regarded

as depriving them of property without due process of law.

Appellants attempt to avoid the application of these principles by asserting that the Act really regulates production and not marketing. They endeavor to support this position by insisting that regulation of marketing necessarily affects the amount produced. In answer to the suggestion that the growers might store the tobacco produced in excess of marketing quotas for sale in the future (and this was expressly contemplated by Congress, see pp. 63–64, *supra*), they urge that this is impossible in the absence of redrying plants, that such plants can only be made use of by cooperative marketing associations, and that there are no such associations in Georgia or Florida.[90]

That any effect which a regulation of the amount marketed may have upon the amount produced does not convert it into a regulation of production has already been shown (*supra*, pp. 67–73). Particularly must this be true when any such effect would come about only because the growers in a particular area might not see fit to avoid any necessity of reducing production by arranging for cooperative redrying and storing of any excess they may produce.[91]

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[90] In Maryland, Virginia, Kentucky, Tennessee, and Wisconsin cooperative associations of tobacco growers are functioning (R. 89–90).

[91] The growers knew long before marketing their tobacco that quotas would be effective (see p. 142, *supra*). Without

Even if the quotas had applied to production rather than marketing and were therefore "retroactive," they would not for that reason be invalid. When production began, the growers knew that a statute which might limit the amount to be marketed was likely to pass, and shortly thereafter the law was passed and the national marketing quota proclaimed. Although the exact quota for each farm was not yet determined, every farmer was necessarily forewarned that an allotment restricting his marketings was to be made. Under such circumstances the absence of precise demarcation of individual quotas at the time of planting the crop would not make the statute arbitrary or unreasonable.[92] If the Act were to be regarded as limiting production, the situation would be analogous to that considered in *Milliken* v. *United*

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adjusting their production in any degree whatever they could have provided, through cooperative marketing, fully effective facilities for redrying any excess and storing it for future sale (R. 56). Such cooperatives had not been successful largely because they attempted to control marketing in addition to providing facilities for redrying and storage (R. 88). The prospect that quotas would control marketing whenever supplies might grow too large would tend to protect such efforts against the principal cause of previous failures.

[92] As Judge Sibley pointed out below: "Had the quotas been fixed in December, as hereafter they will be, many producers would have produced an excess anyhow, the season having been unusually favorable. That chance always must exist" (R. 186).

States, 283 U. S. 15, and *United States* v. *Hudson,* 299 U. S. 498, in each of which the Court held that retroactive application of a statute to transactions occurring after persons were forewarned as to the imminence of future regulation was not unreasonable. In the *Milliken* case an increase in the rate of the applicable tax two years after the making of a gift in contemplation of death was sustained, inasmuch as the testator was left "in no uncertainty" at the time of the transfer that the transaction was to be taxable; he was regarded as "taking his chances of any increase in the tax burden," 283 U. S., at 23. The farmers here who made expenditures with knowledge that a restrictive program was to become effective must also be regarded as taking their chances as to the precise amounts of their individual allotments.

C. THE MARKETING QUOTA PROVISIONS ARE NOT UNREASONABLE, ARBITRARY, CAPRICIOUS, OR UNRELATED TO A LEGITIMATE OBJECT OF CONGRESSIONAL ACTION [93]

In *Nebbia* v. *New York,* 291 U. S. 502, 525, this Court defined the scope of the limitations imposed

[93] We assume in the following argument that the provision in the Fifth Amendment that persons may not be deprived of life, liberty, or property without due process of law gives the courts power to look into the substantive reasonableness or unreasonableness of Congressional regulation. Since this statute plainly does not violate due process, however broadly the Fifth Amendment be interpreted, it is not necessary here to consider whether or not such a construction—first announced many years after the adoption of the Amendment in 1791—is historically accurate or otherwise justified.

by the due process clause in the Fifth and Fourteenth Amendments as follows:

> The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. * * *

In *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379, 391, the Court asserted with respect to the liberty protected by the due-process clause:

> * * * The Constitution * * * speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and *welfare* of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted

in the interests of the community is due process. [Italics supplied.]

The ends which Congress was seeking to attain in the Act here under consideration were the maintenance of a balanced supply of farm products marketed in interstate and foreign commerce and the protection of farmers against unreasonably low prices. We have shown that it was entirely proper for Congress to exercise its commerce power to accomplish such ends. See pp. 86–96, *supra*.

There can be no question that the provisions of the Act constitute appropriate means of achieving these objectives. In order to prevent excessive marketing, the Act limits the amount which may be marketed. A more direct relationship between means and object would be difficult to find. Under these circumstances, as this Court declared in *Virginian Ry.* v. *Federation,* 300 U. S. 515, 558, "it is evident that where, as here, the means chosen are appropriate to the permissible end, there is little scope for the operation of the due process clause."

In view of what has already been said in the Statement, *supra,* pp. 21–38, and Point I, *supra,* pp. 100–103, with respect to the facts in the tobacco industry, it is not necessary to repeat that description of the industry here. It is evident from the record that tobacco prices had been depressed by 1932 to ruinously low levels. It should be suf-

ficient to point out that the amount received by the growers of flue-cured tobacco had decreased from an average of $137,000,000 from 1926 through 1929 to $56,000,000 in 1931 and $43,000,000 in 1932 (R. 84). This drastic reduction in price was not merely the result of the impact of the general depression upon the tobacco industry, since in the same period the profits available for dividends of the chief tobacco manufacturers increased from an average of $76,000,000 to $104,000,000 (R. 84).

When the 1933 marketing season opened, prices were even lower than in 1932 (R. 78). This resulted in the cessation of all marketing operations and the negotiation of a marketing agreement. See pp. 36–37, *supra*.

This agreement raised the average price from below 11.6¢ (the preceding year's average) to a minimum of 17¢ (R. 78). During the period since 1933 prices have been at levels favorable to the growers. "Prices were influenced by the operation and prospective operation of governmental programs regulating the production or marketing of tobacco" (R. 78). Except for the year 1934,[94] prices during that period have been relatively stable, averaging from 20¢ to 23¢ a pound (R. 79). These facts indicate that conditions in the flue-cured tobacco industry before the adoption of the original agricultural program called for remedial

[94] In 1934 production was abnormally low (R. 53), and the price correspondingly high (R. 79).

action not only to stabilize the prices of tobacco in interstate and foreign commerce but to preserve such commerce itself; they also show that Congress was not unreasonable in assuming that a program for the limitation of marketing in years of excessive supply would stabilize prices—interstate prices—at reasonable levels.

The validity of the Act under the due process clause is supported by other considerations than those just set forth. This Court has frequently declared that the police power embraces regulation designed to "promote the public convenience or the general prosperity." *C., B. & Q. Railway* v. *Drainage,* 200 U. S. 561, 592; *Eubank* v. *Richmond,* 226 U. S. 137, 142; *Sligh* v. *Kirkwood,* 237 U. S. 52, 59. Since Congress may exercise "the police power, for the benefit of the public, within the field of interstate commerce" (*Brooks* v. *United States,* 267 U. S. 432, 437; *Ky. Whip & Collar Co.* v. *I. C. R. Co.,* 299 U. S. 334, 347), it may, within that field, legislate for the "general prosperity" or the "public welfare." This was expressly recognized in the passage from the *Nebbia* case quoted above, wherein it was stated that "the Fifth Amendment in the field of federal activity" does "not prohibit governmental regulation for the public welfare." *Nebbia* v. *New York, supra.*

The plight of the tobacco growers was, of course, only typical of that of farmers generally. The Agricultural Adjustment Act of 1938, like the

statutes which preceded it, was enacted because of the problem presented with increasing intensity since 1922 with respect to the existence of continuing surpluses of agricultural commodities. These surpluses were in large part caused by the restoration of European agriculture after the war and the erection of trade barriers in European nations—following the example of this country—aimed at protecting their domestic agriculture and restricting the use of foreign products.[95] These policies of economic nationalism simultaneously expanded agricultural production abroad and contracted the outlets for American farm products. As early as 1925 Congress was concerned about "the existing depression in agriculture." Hoch-Smith Resolution of January 30, 1925, 43 Stat. 801; *Ann Arbor R. Co.* v. *United States,* 281 U. S. 658, 665.

Thus, even before 1929 farm prices and farmers' income had begun to decline[96] and the American farm problem had become acute. The annual reports of the Secretaries of Agriculture from 1922 on emphasized the necessity of avoiding the continued agricultural surpluses if the farm problem was to be solved.[97] The onset of the depression in

[95] See *World Trade Barriers in Relation to American Agriculture*, Senate Doc. No. 70, 73rd Cong., 1st Sess.

[96] See *Facts Relating to the Agricultural Situation*, U. S. Dept. of Agric., May 1932.

[97] See Report of the Secretary of Agriculture, 1922, pp. 2-4; 1923, pp. 4, 6, 7, 13, 19; 1924, p. 21; 1925, p. 14; 1926, pp. 1-2, 4; 1927, p. 19; 1928, pp. 27, 28; 1929, p. 19; 1930, pp. 11, 25, 28, 29, 30; 1931, pp. 6, 10, 13.

1929 and the resultant diminution in domestic buying power greatly aggravated the situation. Surplus stocks accumulated more rapidly [98] and prices drastically declined.[99] By 1933 there was an irresistible demand for federal legislation to alleviate the plight of the farmers.[1]

The first Agricultural Adjustment Act, enacted in May 1933, was designed to limit agricultural surpluses through the payment of benefits to farmers who would reduce the amount produced. The plan adopted in 1938 was designed to meet both the contingencies of surplus and of shortage [2] by restricting marketings, rather than production, in years of excessive supply. The amount produced in excess of the quantity to be marketed in years of

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[98] See Ezekiel and Bean, *Economic Bases for the Agricultural Adjustment Act* (U. S. Dept. of Agric., 1933, p. 19).

[99] Whereas the wholesale prices of all commodities declined 37.3 *per cent* between 1929 and 1933, prices received by farmers dropped 64 *per cent*. Ezekiel and Bean, *supra*, at p. 4.

[1] In the preceding paragraphs we have only outlined in briefest form the causes and consequences of the agricultural problem confronting the nation since the 1920's. The facts thus generally set forth may be said to be of common knowledge and subject to judicial notice. Cf. *Atchison T. & S. F. Ry. Co.* v. *United States*, 284 U. S. 248, 260. For more detailed consideration of the problem see Ezekiel and Bean, *supra; World Trade Barriers in Relation to American Agriculture*, Sen. Doc. No. 70, 73rd Cong., 1st Sess; Bean and Chew, *Economic Trends Affecting Agriculture*, U. S. Dept. of Agric., 1933, and the reports referred to at R. 47–49.

[2] The Court may take judicial notice of the droughts which have reduced agricultural production in several recent years.

surplus was to be stored for sale and consumption in other years. (See H. R. Rep. 1645, 75th Cong., 2nd sess., Appendix, p. 208.)

We do not, of course, claim, and it is not incumbent upon the government to show, that this legislation provides a complete panacea for the problems of American agriculture. It is for Congress, not the courts, to decide such questions of policy and wisdom. *Nebbia* v. *New York*, 291 U. S. 502, 537; *Northern Securities Co.* v. *United States*, 193 U. S. 197, 337. The requisites of due process of law are satisfied if the effort to improve the agricultural situation can be said to promote the "general prosperity" or the "public welfare" and if the means adopted by Congress to accomplish these objectives have "some rational basis" in knowledge and experience. Cf. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152. The above brief outline of the problem with which Congress was seeking to deal is sufficient to demonstrate that this statute fulfills both of these requirements.

We have up to this point considered the question of due process as if the burden were on the government to show that the Act is not arbitrary or unreasonable. As this Court has frequently recognized, that burden is upon the one attacking the statute. Even without any Congressional findings, facts supporting the reasonableness of a statute will be presumed to exist and facts found by Congress will be accepted by the courts as

true unless affirmatively and clearly disproved. *United States* v. *Carolene Products Co., supra; Metropolitan Co.* v. *Brownell,* 294 U. S. 580, 584, and cases there cited. Here the Act itself and extensive reports contain findings of fact supporting the reasonableness of this legislation. The principles set forth in the above cases are thus clearly applicable. This case differs from the *Carolene* case in that (1) appellants here make no claim that the facts found by Congress are untrue, and (2) instead of disproof, there is here ample affirmative evidence in the record confirming the findings of Congress and the statements in the committee reports.

IV

THE APPLICABLE PROVISIONS OF THE ACT CONTAIN NO UNCONSTITUTIONAL DELEGATION OF POWER

Appellants, though disclaiming any contention that the marketing quotas allotted to them were not established in conformity with the statute, assert that the Act on its face contains an unconstitutional delegation of power. We are confident that examination of the statute will reveal that very few acts of Congress dealing with complex economic problems have gone as far as the present Act in spelling out standards for and limitations upon executive action.

It is apparently not contended that the referendum provision contained in Section 312 (c) con-

tains an invalid delegation to the farmers. Any such argument has been foreclosed by the decision of this Court in *Currin* v. *Wallace, supra.*

We will consider therefore only the standards established as a guide for administrative action in determining whether to fix marketing quotas and what those quotas shall be.

A. WHEN MARKETING QUOTAS ARE TO BE ESTABLISHED

Section 312 (a) of the Act establishes with definiteness the conditions upon which the Secretary shall proclaim a national marketing quota. Whenever, on specified dates,[3] "the Secretary finds that the total supply of tobacco as of the beginning of the marketing year then current exceeds the reserve supply level therefor," he "shall proclaim the amount of such total supply, and * * * a national marketing quota shall be in effect."

The making of such a finding requires the Secretary only to determine and compare the total supply and the reserve supply level. The Act defines total supply as the carry-over as of July first, plus estimated production (Sec. 301 (b) (16) (B)). It defines "reserve supply level" (Sec. 301 (b) (14) (B)) as the normal supply plus five *per cent* thereof. "Normal supply" is defined (Sec. 301 (b) (10) (B)) as 275 *per cent* of a normal year's

[3] The proclamation is to be made by December 1 (Sec. 312 (a)), except that for the year 1938–1939 it is to be made within fifteen days following the date of the enactment of the Act (Sec. 312 (d)).

domestic consumption and 165 *per cent* of a normal year's exports. "Normal year's domestic consumption" (Sec. 301 (b) (11) (B)) and "normal year's exports" (Sec. 301 (b) (12)) are defined to mean the average quantity consumed in the United States and exported during the ten preceding years, adjusted for current trends. Each of these figures can be determined from available statistics kept by the Federal Government, and Section 301 (c) requires the Secretary to use the latest of such statistics in making these determinations.

It is apparent that the Secretary's function in determining whether a national marketing quota is to be established is limited to the finding of facts contained in official statistics and the making of simple computations, in the main arithmetical, therefrom. The room for discretion and judgment in making adjustment for current trends and in estimating the next year's production is slight, since those factors are reasonably predictable in the light of official statistics.

The national marketing quota so proclaimed goes into effect unless in a referendum conducted by the Secretary among the farmers within thirty days of the original proclamation over one-third of those voting oppose the quota. In such case the Secretary is directed to proclaim the result of the referendum, "and the quota shall not be effective thereafter" (Sec. 312 (c)).

The statute declares that the Secretary "shall" provide for the apportionment of the national mar-

keting quota among the states and individual farms (Sec. 313 (a), (b)). Thus, the fixing of a quota for the states and farms follows automatically once a national marketing quota is established. We know of no case in which it has even been suggested that administrative action so circumscribed constitutes an invalid delegation of power.

B. DETERMINATION OF THE AMOUNT OF THE NATIONAL MARKETING QUOTA

Section 312 (a) provides that the Secretary shall "determine and specify" in his proclamation "the amount of the national marketing quota." The amount is to be the total quantity of tobacco which will make available during the marketing year a supply equal to the reserve supply level (Sec. 312 (a)). The Act also provides for minor upward adjustments in the amount so determined. The marketing quota for any state is not to be reduced to a point less than 75 percent of the production in such state for the year 1937 (Sec. 313 (a)). Each state is to be given a minimum allotment equal to the average national yield for the preceding five years of five hundred acres of flue-cured tobacco (Sec. 313 (e)). For the year 1938 the national quota is to be increased an amount sufficient to allow an increase of up to four percent for each state to prevent individual farmers from receiving inadequate allotments in view of past production (Sec. 313 (e)). The total of these adjustments for

1938 raised the national quota for flue-cured tobacco from 705,000,000 to 748,079,000 pounds (R. 42). Since they serve only to increase the quota, they cannot prejudice any grower.[4]

It is plain that the determination of the amount of the national marketing quota also requires only the making of a finding from available statistics and leaves nothing of consequence to administrative discretion.

C. APPORTIONMENT OF THE NATIONAL QUOTA AMONG THE STATES

The standards to be employed by the Secretary in apportioning the national marketing quota among the states are prescribed in Section 313 (a), which reads as follows:

> SEC. 313. (a) The national marketing quota for tobacco established pursuant to the provisions of section 312, less the amount to be allotted under subsection (c) of this section, shall be apportioned by the Secretary among the several States on the basis of the total production of tobacco in each State during the five calendar years immediately preceding the calendar year in which the quota is proclaimed (plus, in applicable years, the normal production on the acreage diverted under previous agricultural adjustment and conservation programs), with such adjustments as are determined to be necessary to make correction for abnormal conditions of

[4] See footnote 7, p. 10.

> production, for small farms, and for trends in production, giving due consideration to seed bed and other plant diseases during such five-year period: *Provided, however*, That to prevent in any case too sharp and sudden reduction in acreage of tobacco production in any State, the marketing quota for flue-cured tobacco for any State for any marketing year shall not be reduced to a point less than 75 per centum of the production of flue-cured tobacco in such State for the year 1937.

The figures for production and diversion under previous programs are readily available for each state. Except for the adjustments for abnormal conditions of production,[5] for small farms, and for trends in production, the determination here too is a mathematical one leaving nothing to discretion. Each state is to be given an allotment proportionate to its share of the total national production during the preceding five years but not less than 75 per cent of the production for the year 1937.

The factors to be considered in making the adjustments call for the exercise of judgment, and thus, are not entirely statistical or mathematical. Nevertheless, they clearly reflect the policy of Congress and constitute "standards within the framework of which the administrative agent is to supply details." *Currin* v. *Wallace, supra.* In most of the cases in which delegation of authority to ad-

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[5] "Seed bed and other plant diseases" are given consideration under this item.

ministrative officers has been upheld, the exercise of judgment has been subjected to restrictions not nearly as narrow as those considered here. Cf. *United States* v. *Grimaud,* 220 U. S. 506; *Radio Comm'n* v. *Nelson Bros. Co.,* 289 U. S. 266; *N. Y. Central Securities* v. *U. S.,* 287 U. S. 12; *Avent* v. *United States,* 266 U. S. 127. See also pp. 170-174, *infra.*

D. THE ALLOTMENT OF THE QUOTAS TO THE INDIVIDUAL FARMS

Congress obviously could not be expected to allocate to each of the 190,000 (R. 74) flue-cured tobacco farms its proportion of the State marketing quota. Establishment of a general standard to serve as the guide for administrative action was essential if the power of Congress to fix such quotas was to be exercised at all. Cf. *Hampton & Co.* v. *United States,* 276 U. S. 394, 406. We submit that in defining the limits and objectives of administrative action in apportioning the State quotas Congress has gone as far in curtailing executive discretion as is practicable and that it has fixed standards much more definite and specific than those in many other valid regulatory laws.

The standards established by Congress for allotting flue-cured-tobacco quotas to farms are to be found in Section 313, paragraphs (b), (c), and (e), of the Act. The primary standard for apportioning the State quotas is set forth in Section 313 (b) as follows:

> The Secretary shall provide, through the local committees, for the allotment of the marketing quota for any State among the farms on which tobacco is produced, on the basis of the following: Past marketing of tobacco, making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: * * *

The factors which the Secretary is required to take into consideration are plainly those which would be employed by farmers in determining how much tobacco would be marketed from each farm.

This standard is supplemented by provisions made in Section 313, paragraphs (b), (c) and (e), for certain special situations. The only deviation from the primary standard for the apportionment of the state quota is required by Section 313 (b) which provides[6] that "old" tobacco farms shall

[6] This proviso reads as follows:

> * * * *Provided*, That, except for farms on which for the first time in five years tobacco is produced to be marketed in the marketing year for which the quota is effective, the marketing quota for any farm shall not be less than the smaller of either (1) three thousand two hundred pounds, in the case of flue-cured tobacco, and two thousand four hundred pounds, in the case of other kinds of tobacco, or (2) the average tobacco production for the farm during the preceding three years, plus the average normal production of any tobacco acreage diverted under agricultural adjustment and conservation programs during such preceding three years.

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receive a definite minimum quota of 3,200 pounds, or the average production during the three preceding years, whichever is the smaller. This involves a purely mathematical determination and is the only adjustment to be made out of the state quota.

Section 313 (e) provides for increasing 1938 allotments of farms which the Secretary finds have received inadequate allotments in view of past production. Such increases do not come out of the state quota but from an increase in the 1938 national quota sufficient to provide for increases amounting to not more in each state than 4 percent of the state's quota. Such increases are made directly out of this special reserve and cannot reduce the amount any grower's farm receives under the apportionment of the state allotment.[1]

Allotments to "new" tobacco farms, i. e. those producing tobacco for the first time in five years,

[1] This section reads as follows:

> * * * In case of flue-cured tobacco, the national quota for 1938 is increased by a number of pounds required to provide for each State in addition to the State poundage allotment a poundage not in excess of *4 per centum* of the allotment which shall be apportioned in amounts which the Secretary determines to be fair and reasonable to farms in the State receiving allotments under the Agricultural Adjustment Act of 1938 which the Secretary determines are inadequate in view of past production of tobacco, and for each year by a number of pounds sufficient to assure that any State receiving a State poundage allotment of flue-cured tobacco shall receive a minimum State poundage allotment of flue-cured tobacco equal to the average national yield for the preceding five years of five hundred acres of such tobacco.

are not made out of the state allotment but are made out of a poundage, not exceeding 5 percent of the national quota, reserved especially for allotments to new farms and for additional allotments to small farms. Allotments are made to new farms in any state, whether the State has a quota or not, on the basis of the same factors used in the apportionment of the state allotment to old farms, except, of course, that there are no past marketings to be considered; but new farms are to receive no more than 75 percent of the quota for similar old farms (Sec. 313 (c)).[8]

Plainly administrative officers have "no unfettered discretion" in carrying out such a plan. Cf. *Currin* v. *Wallace, supra.* Congress has laid down

[8] Section 313 (c) reads as follows:

> The Secretary shall provide, through local committees, for the allotment of not in excess of 5 per centum of the national marketing quota (1) to farms in any State whether it has a State quota or not on which for the first time in five years tobacco is produced to be marketed in the year for which the quota is effective and (2) for further increase of allotments to small farms pursuant to the proviso in subsection (b) of this section on the basis of the following: Land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That farm marketing quotas established pursuant to this subsection for farms on which tobacco is produced for the first time in five years shall not exceed 75 per centum of the farm marketing quotas established pursuant to subsection (b) of this section for farms which are similar with respect to the following: Land, labor, and equipment available for the production of tobacco, crop-rotation practices, and the soil and other physical factors affecting the production of tobacco.

"intelligible principles" to which the administrative agency is directed to conform (cf. *Hampton & Co.* v. *United States*, *supra*), and merely given power "to fill up the details" to those who are to act (cf. *Wayman* v. *Southard*, 10 Wheat. 1, 43).

Appellants' contention is that the statute contains an invalid delegation because no farmer can tell from the Act itself exactly what his quota will be, and because the final determination of the quotas depends upon the exercise of administrative judgment.

It is true, of course, that the determination of farm quotas calls for the exercise of judgment and not merely for mathematical computations. But the same thing may be said of many statutes which have been upheld by this Court, in most of which the delegation of authority was much more sweeping and less circumscribed than in the case at bar.

Most closely in point are cases dealing with the apportionment of coal cars among mines and of rates among railroads under the Interstate Commerce Act. Section 1, paragraph 15, of that Act (41 Stat. 476-477) authorizes the Interstate Commerce Commission in case of emergency "to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interests of the public and the commerce of the people." In *Avent* v. *United States*, 266 U. S. 127, this Court held that

an attack on the constitutionality of this provision did not contain sufficient substance even to warrant the granting of a writ of error. With respect to the adequacy of the above standard, the Court declared that (p. 130):

> The statute confines the power of the Commission to emergencies, and the requirement that the rules shall be reasonable and in the interest of the public and of commerce fixes the only standard that is practicable or needed.

Both the provision of the Interstate Commerce Act referred to above and those of the Agricultural Adjustment Act here in question are concerned with apportionment. If the general standards of reasonableness and the public interest are sufficient under the Interstate Commerce Act without any specification of the factors to be considered in applying them, the detailed enumeration in the Agricultural Adjustment Act of the factors to be considered must *a fortiori* be sufficient.

Section 1, paragraph 14 (41 Stat. 476), of the Interstate Commerce Act provides that "the Commission may, * * * establish reasonable rules, regulations, and practices with respect to car service by carriers * * *." In *Assigned Car Cases*, 274 U. S. 564, the Court held that this provision authorized the Commission to determine the method of apportionment of coal cars among the mines. The validity of this delegation, which is

just as broad as that considered in the *Avent* case, was assumed without question, although "reasonableness" is the only standard provided in the statute.[9]

Section 15, paragraph 6, of the Interstate Commerce Act (41 Stat. 486) authorizes the Commission to "prescribe the just, reasonable, and equitable divisions" of rates to be received by carriers. It specifies the factors to be considered by the Commission in making the divisions as follows:

> * * * In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carier to a greater or less proportion than another carrier of the joint rate, fare or charge.

[9] As to the standards used by the Commission in determining the ratings for the mines as a basis for the apportionment, see p. 67, *supra*.

This section was given effect and the validity of these standards was assumed without question in *New England Divisions Case,* 261 U. S. 184. The standards prescribed in the above section of the Interstate Commerce Act and those contained in Section 313 of the Agricultural Adjustment Act are similar in that each consists of a number of factors to be considered by the administrative agency in making an apportionment. In both statutes the exercise of judgment is required; under neither can the allotment be determined merely by mathematical formulae. But the factors to be considered under the Interstate Commerce Act are much more general than those prescribed in the Agricultural Adjustment Act. Prominent among the matters which the Interstate Commerce Commission is to consider are "efficiency," "fair return," "importance to the public," and "any other fact or circumstance which would ordinarily * * * entitle one carrier to a greater or less proportion than another carrier." Each of the elements to be considered in apportioning the tobacco quotas under the Agricultural Adjustment Act has more specific content and meaning and will better serve as a guide to administrative action than any of these.

The standards set forth in the instant Act are also far more definite and precise than those contained in numerous other statutes which have been upheld as constitutional. Cf. *N. Y. Central Securi-*

ties v. *U. S.*, 287 U. S. 12 (in the public interest); *Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266 (public convenience, interest, or necessity); *United States* v. *Chemical Foundation*, 272 U. S. 1 (in the public interest); *Colorado* v. *United States*, 271 U. S. 153, and *Ches. & Ohio Ry.* v. *United States*, 283 U. S. 35 (certificates of public convenience and necessity); *Tagg Bros.* v. *United States*, 280 U. S. 420 (just and reasonable commissions); *Wayman* v. *Southard*, 10 Wheat. 1 (in their discretion deem expedient); *Buttfield* v. *Stranahan*, 192 U. S. 470 (purity, quality, and fitness for consumption); *Union Bridge Co.* v. *United States*, 204 U. S. 364; *Monongahela Bridge* v. *United States*, 216 U. S. 177; *Hannibal Bridge Co.* v. *United States*, 221 U. S. 194; and *Louisville Bridge Co.* v. *United States*, 242 U. S. 409 (unreasonable obstruction to navigation); *Mahler* v. *Eby*, 264 U. S. 32 (undesirable resident); *McKinley* v. *United States*, 249 U. S. 397 (war powers); *United States* v. *Grimaud*, 220 U. S. 506 (regulation of forest reserves).

This Court has repeatedly "recognized that legislation must often be adapted to conditions involving details with which it is impracticable for the legislation to deal directly," that the Constitution does not deny "to the Congress the necessary resources of flexibility and practicality" which would enable it to lay down policies and establish standards. *Currin* v. *Wallace, supra; Panama Refining*

Co. v. *Ryan,* 293 U. S. 388, 421. "In such cases 'a general provision may be made, and power given to those who are to act under such general provisions to fill up the details.' *Wayman* v. *Southard,* 10 Wheat. 1, 43." *Currin* v. *Wallace, supra.* This Act more than satisfies any criteria ever applied by the courts in determining the validity of legislation authorizing executive action.

The allotting of farm marketing quotas in flue-cured tobacco involves, as the Court stated in the *Panama* case, a consideration of "a host of details with which the national legislature cannot deal directly." The subject matter of the regulation is so complex that the Congressional policy relating to it can be vitalized only through administrative assistance. If Congress was to act at all, it was obviously necessary that it empower those charged with administering the Act to make "subordinate rules within prescribed limits and to find the facts in the many individual cases to which the regulation was intended to apply." Only through such assistance could the power exercised by Congress be effectively executed. It is submitted that the Secretary's role in furnishing this necessary administrative assistance is one required by the nature of the legislative process, and that the purposes of his action and the limits within which he may act are set out in this statute with far greater particularity than in many acts already held to contain valid delegations of authority.

CONCLUSION

The provisions of the Agricultural Adjustment Act for the establishment of the marketing quotas for flue-cured tobacco are a constitutional exercise of the power of Congress to regulate interstate and foreign commerce. They neither contain any unconstitutional delegation by Congress of its legislative power nor deprive the appellants of liberty or property in violation of the Fifth Amendment to the Constitution. The judgment of the court below should be affirmed.

Respectfully submitted.

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APPENDIX

A. Provisions of the Act

AN ACT

To provide for the conservation of national soil resources and to provide an adequate and balanced flow of agricultural commodities in interstate and foreign commerce and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Agricultural Adjustment Act of 1938."

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices.

TITLE I—AMENDMENTS TO SOIL CONSERVATION AND DOMESTIC ALLOTMENT ACT

SEC. 101.[1] * * *.

* * * *In carrying out the provisions of this section in the continental United States, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. The Secretary shall designate local administrative areas as units for administration of programs under this section. No such local area shall include more than one county or parts of different counties. Farmers within any such local administrative area, and participating or cooperating in programs administered within such area, shall elect annually from among their number a local committee of not more than three members for such area and shall also elect annually from among their number a delegate to a county convention for the election of a county committee. The delegates from the various local areas in the county shall, in a county convention, elect, annually, the county committee for the county which shall consist of three members who are farmers in the county. The local committee shall select a secretary and may utilize the county agricultural extension agent for such purpose. The county committee shall select a secretary who may be the county agricultural extension agent. If such county agricultural extension agent shall not have been elected secretary of such committee, he shall be ex officio a member of the county committee. The county agricultural extension agent shall not have*

[1] This provision is an amendment to Section 8 (b) of the Soil Conservation and Domestic Allotment Act (49 Stat. 1148).

the power to vote. In any county in which there is only one local committee the local committee shall also be the county committee. In each State there shall be a State committee for the State composed of not less than three or more than five farmers who are legal residents of the State and who are appointed by the Secretary. The State director of the Agricultural Extension Service shall be ex officio a member of such State committee. The ex officio members of the county and State committees shall be in addition to the number of members of such committees hereinbefore specified. The Secretary shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs.

* * * * *

TITLE III—LOANS, PARITY PAYMENTS, CONSUMER SAFEGUARDS, AND MARKETING QUOTAS

SUBTITLE A—DEFINITIONS, LOANS, PARITY PAYMENTS, AND CONSUMER SAFEGUARDS

DEFINITIONS

SEC. 301. (a) GENERAL DEFINITIONS.—For the purposes of this title and the declaration of policy—

(1) "Parity," as applied to prices for any agricultural commodity, shall be that price for the commodity which will give to the commodity a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of such commodity in the base period; and, in the case of all commodities for which the base period is the period August 1909 to July 1914, which will also reflect current interest payments per acre on farm indebt-

edness secured by real estate, tax payments per acre on farm real estate, and freight rates, as contrasted with such interest payments, tax payments, and freight rates during the base period. The base period in the case of all agricultural commodities except tobacco shall be the period August 1909 to July 1914, and, in the case of tobacco, shall be the period August 1919 to July 1929.

(2) "Parity," as applied to income, shall be that per capita net income of individuals on farms from farming operations that bears to the per capita net income of individuals not on farms the same relation as prevailed during the period from August 1909 to July 1914.

(3) The term "interstate and foreign commerce" means sale, marketing, trade, and traffic between any State or Territory or the District of Columbia or Puerto Rico, and any place outside thereof; or between points within the same State or Territory or within the District of Columbia or Puerto Rico, through any place outside thereof; or within any Territory or within the District of Columbia or Puerto Rico.

(4) The term "affect interstate and foreign commerce" means, among other things, in such commerce, or to burden or obstruct such commerce or the free and orderly flow thereof; or to create or tend to create a surplus of any agricultural commodity which burdens or obstructs such commerce or the free and orderly flow thereof.

(5) The term "United States" means the several States and Territories and the District of Columbia and Puerto Rico.

(6) The term "State" includes a Territory and the District of Columbia and Puerto Rico.

(7) The term "Secretary" means the Secretary of Agriculture, and the term "Department" means the Department of Agriculture.

(8) The term "person" means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of a State.

* * * * *

(b) DEFINITIONS APPLICABLE TO ONE OR MORE COMMODITIES.—For the purposes of this title—

* * * * *

(3) * * *

(C) "Carry-over" of tobacco for any marketing year shall be the quantity of such tobacco on hand in the United States at the beginning of such marketing year, which was produced in the United States prior to the beginning of the calendar year then current, except that in the case of cigar-filler and cigar-binder tobacco the quantity of type 46 on hand and theretofore produced in the United States during such calendar year shall also be included.

* * * * *

(6) (A) "Market," in the case of cotton, wheat, and tobacco, means to dispose of by sale, barter, or exchange, but, in the case of wheat, does not include disposing of wheat as premium to the Federal Crop Insurance Corporation under Title V.

* * * * *

(D) "Marketed," "marketing," and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used.

(7) "Marketing year" means, in the case of the following commodities, the period beginning on the

first and ending with the second date specified below:

Corn, October 1–September 30;
Cotton, August 1–July 31;
Rice, August 1–July 31;
Tobacco (flue-cured), July 1–June 30;
Tobacco (other than flue-cured), October 1–September 30.

Insert on p. 182 in lieu of the 12th line

(B) The "normal supply" of tobacco shall be a

plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports as an allowance for a normal carry-over.

(11) * * *

(B) "Normal year's domestic consumption," in the case of cotton and tobacco, shall be the yearly average quantity of the commodity produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

* * * * *

(12) "Normal year's exports" in the case of corn, cotton, rice, tobacco, and wheat shall be the yearly average quantity of the commodity produced in the United States that was exported from the United States during the ten marketing years (or, in the case of rice, the five marketing years) immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

* * * * *

(14) * * *.

(B) "Reserve supply level" of tobacco shall be the normal supply plus 5 per centum thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty.

(15) "Tobacco" means each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 of the Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, and 14;

Fire-cured and dark air-cured tobacco, comprising types 21, 22, 23, 24, 35, 36, and 37;

Burley tobacco, comprising type 31;

Maryland tobacco, comprising type 32;

Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, and 55;

Cigar-filler tobacco, comprising type 41.

The provisions of this title shall apply to each of such kinds of tobacco severally.

(16) * * *.

(B) "Total supply" of tobacco for any marketing year shall be the carry-over at the beginning of such marketing year plus the estimated production thereof in the United States during the calendar year in which such marketing year begins, except that the estimated production of type 46 tobacco during the marketing year with respect to which the determination is being made shall be used in lieu of the estimated production of such type dur-

ing the calendar year in which such marketing year begins in determining the total supply of cigar-filler and cigar-binder tobacco.

(c) The latest available statistics of the Federal Government shall be used by the Secretary in making the determinations required to be made by the Secretary under this Act.

* * * * * *

LOANS ON AGRICULTURAL COMMODITIES

SEC. 302. (a) The Commodity Credit Corporation is authorized, upon recommendation of the Secretary and with the approval of the President, to make available loans on agricultural commodities (including dairy products). Except as otherwise provided in this section, the amount, terms, and conditions of such loans shall be fixed by the Secretary, subject to the approval of the Corporation and the President.

SUBTITLE B—MARKETING QUOTAS

PART I.—MARKETING QUOTAS—TOBACCO

LEGISLATIVE FINDING

SEC. 311 (a). The marketing of tobacco constitutes one of the great basic industries of the United States with ramifying activities which directly affect interstate and foreign commerce at every point, and stable conditions therein are necessary to the general welfare. Tobacco produced for market is sold on a Nation-wide market and, with its products, moves almost wholly in interstate and foreign commerce from the producer to the ultimate consumer. The farmers producing such com-

modity are subject in their operations to uncontrollable natural causes, are widely scattered throughout the Nation, in many cases such farmers carry on their farming operations on borrowed money or leased lands, and are not so situated as to be able to organize effectively, as can labor and industry through unions and corporations enjoying Government protection and sanction. For these reasons, among others, the farmers are unable without Federal assistance to control effectively the orderly marketing of such commodity with the result that abnormally excessive supplies thereof are produced and dumped indiscriminately on the Nation-wide market.

(b) The disorderly marketing of such abnormally excessive supplies affects, burdens, and obstructs interstate and foreign commerce by (1) materially affecting the volume of such commodity marketed therein, (2) disrupting the orderly marketing of such commodity therein, (3) reducing the price for such commodity with consequent injury and destruction of interstate and foreign commerce in such commodity, and (4) causing a disparity between the prices for such commodity in interstate and foreign commerce and industrial products therein, with a consequent diminution of the volume of interstate and foreign commerce in industrial products.

(c) Whenever an abnormally excessive supply of tobacco exists, the marketing of such commodity by the producers thereof directly and substantially affects interstate and foreign commerce in such commodity and its products, and the operation of the provisions of this Part becomes necessary and

appropriate in order to promote, foster, and maintain an orderly flow of such supply in interstate and foreign commerce.

NATIONAL MARKETING QUOTA

SEC. 312. (a) Whenever, on the 15th day of November of any calendar year, the Secretary finds that the total supply of tobacco as of the beginning of the marketing year then current exceeds the reserve supply level therefor, the Secretary shall proclaim the amount of such total supply, and, beginning on the first day of the marketing year next following and continuing throughout such year, a national marketing quota shall be in effect for the tobacco marketed during such marketing year. The Secretary shall also determine and specify in such proclamation the amount of the national marketing quota in terms of the total quantity of tobacco which may be marketed, which will make available during such marketing year a supply of tobacco equal to the reserve supply level. Such proclamation shall be made not later than the 1st day of December in such year.[2]

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[2] Sec. 19 of the act entitled "An act to amend the Agricultural Adjustment Act of 1938, and for other purposes," Public, No. 470, 75th Cong., approved April 7, 1938, provides as follows:

"The proclamations heretofore issued by the Secretary of Agriculture under sections 312 (a), 327, 328, and 345 of the Agricultural Adjustment Act of 1938 shall be effective as provided in said sections, and no provision of any amendment made by this Act shall be construed as requiring any further action under section 312 (c) or 347 of the Agricultural Adjustment Act of 1938 with respect to marketing years beginning in 1938."

(b) Whenever in the case of burley tobacco, and fire-cured and dark air-cured tobacco, respectively, the total supply proclaimed pursuant to the provisions of subsection (a) of this section exceeds the reserve supply level by more than 5 per centum and a national marketing quota is not in effect for such tobacco during the marketing year then current, a national marketing quota shall also be in effect for such tobacco marketed during the period from the date of such proclamation to the end of such current marketing year, and the Secretary shall determine and shall specify in such proclamation the amount of such national marketing quota in terms of the total quantity which may be marketed, which will make available during such current marketing year a supply of tobacco equal to the reserve supply level. The provisions of this subsection shall not be effective prior to the beginning of the marketing year beginning in the calendar year 1938.

(c) Within thirty days after the date of the issuance of the proclamation specified in subsection (a) of this section, the Secretary shall conduct a referendum of farmers who were engaged in production of the crop of tobacco harvested prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quota. If in the case of burley tobacco, or fire-cured and dark air-cured tobacco, respectively, farmers would be subject to a national quota for the next succeeding marketing year pursuant to the provisions of subsection (a) of this section, and also to a national marketing quota for the current marketing year pursuant to the provisions of subsection (b) of this

section, the referendum shall provide for voting with respect to each such quota. If more than one-third of the farmers voting in the referendum oppose such quota, the Secretary shall, prior to the 1st day of January, proclaim the result of the referendum and such quota shall not be effective thereafter.[3]

(d) In connection with the determination and proclamation of any marketing quota for the 1938-1939 marketing year, the determination by the Secretary pursuant to subsection (a) of this section shall be made and proclaimed within fifteen days following the date of the enactment of this Act, and the proclamation of the Secretary pursuant to subsection (c) of this section shall be made within forty-five days following the date of the enactment of this Act.

(e) Marketing quotas shall not be in effect with respect to cigar-filler tobacco comprising type 41 during the marketing year beginning in 1938 or the marketing year beginning in 1939.

(f) Notwithstanding any other provisions of this Act, the Secretary shall, within fifteen days after the enactment of this subsection (f), proclaim the amount of the total supply of burley tobacco for the marketing year therefor beginning October 1, 1937, and a national marketing quota shall be in effect for burley tobacco marketed during the marketing year for such tobacco beginning October 1, 1938. The Secretary shall also determine and specify in such proclamation the amount of such national marketing quota in terms of the total quantity of such tobacco which may be mar-

[3] See footnote on preceding page.

eted, which will make available during the marketing year beginning October 1, 1938, a supply of such tobacco equal to the reserve supply level. The referendum with respect to such quota, pursuant to subsection (c) of this section, shall be held and the results thereof proclaimed within forty-five days after the enactment of this subsection (f).[4]

SEC. 313. (a) The national marketing quota for tobacco established pursuant to the provisions of section 312, less the amount to be allotted under subsection (c) of this section, shall be apportioned by the Secretary among the several States on the basis of the total production of tobacco in each State during the five calendar years immediately preceding the calendar year in which the quota is proclaimed (plus, in applicable years, the normal production on the acreage diverted under previous agricultural adjustment and conservation programs), with such adjustments as are determined to be necessary to make correction for abnormal conditions of production, for small farms, and for trends in production, giving due consideration to seed bed and other plant diseases during such five-year period: *Provided, however,* That to prevent in any case too sharp and sudden reduction in acreage of tobacco production in any State, the marketing quota for flue-cured tobacco for any State for any marketing year shall not be reduced to a point less than 75 per centum of the production of flue-cured tobacco in such State for the year 1937.

[4] This subsection (f) was added by the act entitled "An act amending section 312 of the Agricultural Adjustment Act of 1938," Public, No. 452, 75th Cong., approved March 26, 1938.

(b) The Secretary shall provide, through the local committees, for the allotment of the marketing quota for any State among the farms on which tobacco is produced, on the basis of the following: Past marketing of tobacco, making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That, except for farms on which for the first time in five years tobacco is produced to be marketed in the marketing year for which the quota is effective, the marketing quota for any farm shall not be less than the smaller of either (1) three thousand two hundred pounds, in the case of flue-cured tobacco, and two thousand four hundred pounds, in the case of other kinds of tobacco, or (2) the average tobacco production for the farm during the preceding three years, plus the average normal production of any tobacco acreage diverted under agricultural adjustment and conservation programs during such preceding three years.

(c) The Secretary shall provide, through local committees, for the allotment of not in excess of 5 per centum of the national marketing quota (1) to farms in any State whether it has a State quota or not on which for the first time in five years tobacco is produced to be marketed in the year for which the quota is effective and (2) for further increase of allotments to small farms pursuant to the proviso in subsection (b) of this section on the basis of the following: Land, labor, and equipment available for the production of tobacco; crop-rota-

tion practices; and the soil and other physical factors affecting the production of tobacco: *Provided,* That farm marketing quotas established pursuant to this subsection for farms on which tobacco is produced for the first time in five years shall not exceed 75 per centum of the farm marketing quotas established pursuant to subsection (b) of this section for farms which are similar with respect to the following: Land, labor, and equipment available for the production of tobacco, crop-rotation practices, and the soil and other physical factors affecting the production of tobacco.

(d) Farm marketing quotas may be transferred only in such manner and subject to such conditions as the Secretary may prescribe by regulations.

(e) *In case of flue-cured tobacco, the national quota for 1938 is increased by a number of pounds required to provide for each State in addition to the State poundage allotment a poundage not in excess of* **4 per centum** [5] *of the allotment which shall be apportioned in amounts which the Secretary determines to be fair and reasonable to farms in the State receiving allotments under the Agricultural Adjustment Act of 1938 which the Secretary determines are inadequate in view of past production of tobacco, and for each year by a number of pounds sufficient to assure that any State receiving a State poundage allotment of flue-cured tobacco shall receive a minimum State poundage*

[5] The bold-faced words were substituted by sec. 2 (a) of the act entitled "An act to amend the Agricultural Adjustment Act of 1938," Public, No. 557, 75th Cong., approved May 31, 1938, in lieu of the expression "2 per centum."

allotment of flue-cured tobacco equal to the average national yield for the preceding five years of five hundred acres of such tobacco.[6]

(f) In the case of fire-cured and dark air-cured and burley tobacco, the national quota for 1938 is increased by a number of pounds required to provide for each State in addition to the State poundage allotment a poundage not in excess of 2 per centum of the allotment which shall be apportioned in amounts which the Secretary determines to be fair and reasonable to farms in the State receiving allotments under this section which the Secretary determines are inadequate in view of past production of tobacco.[7]

PENALTIES

SEC. 314. The marketing of any tobacco in excess of the marketing quota for the farm on which the tobacco is produced, except the marketing of any such tobacco for nicotine or other byproduct uses, shall be subject to a penalty of 50 per centum of the market price of such tobacco on the date of such marketing, or if the following rates are higher, 3 cents per pound in the case of flue-cured, Maryland, or burley, and 2 cents per pound in the case of all other kinds of tobacco. Such penalty shall be paid by the person who acquires

[6] This italicized subsection was added by sec. 5 of the act entitled "An act to amend the Agricultural Adjustment Act of 1938, and for other purposes," Public, No. 470, 75th Cong., approved April 7, 1938.

[7] This subsection (f) was added by sec. 2 (b) of the act entitled "An act to amend the Agricultural Adjustment Act of 1938," Public, No. 557, 75th Cong., approved May 31, 1938.

such tobacco from the producer but an amount equivalent to the penalty may be deducted by the buyer from the price paid to the producer in case such tobacco is marketed by sale; or, if the tobacco is marketed by the producer through a warehouseman or other agent, such penalty shall be paid by such warehouseman or agent, who may deduct an amount equivalent to the penalty from the price paid to the producer: *Provided,* That in case any tobacco is marketed directly to any person outside the United States the penalty shall be paid and remitted by the producer.

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SUBTITLE C—ADMINISTRATIVE PROVISIONS

PART I—PUBLICATION AND REVIEW OF QUOTAS

APPLICATION OF PART

SEC. 361. This Part shall apply to the publication and review of farm marketing quotas established for tobacco, corn, wheat, cotton, and rice established under subtitle B.

PUBLICATION AND NOTICE OF QUOTA

SEC. 362. All acreage allotments, and the farm marketing quotas established for farms in a county or other local administrative area shall, in accordance with regulations of the Secretary, be made and kept freely available for public inspection in such county or other local administrative area. An additional copy of this information shall be kept available in the office of the county agricultural extension agent or with

the chairman of the local committee. Notice of the farm marketing quota of his farm shall be mailed to the farmer.

REVIEW BY REVIEW COMMITTEE

SEC. 363. Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in section 362, have such quota reviewed by a local review committee composed of three farmers appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotment, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final.

REVIEW COMMITTEE

SEC. 364. The members of the review committee shall receive as compensation for their services the same per diem as that received by the members of the committee utilized for the purposes of the Soil Conservation and Domestic Allotment Act, as amended. The members of the review committee shall not be entitled to receive compensation for more than thirty days in any one year.

INSTITUTION OF PROCEEDINGS

SEC. 365. If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail, file a bill

in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact.

COURT REVIEW

SEC. 366. The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be con-

clusive. At the earliest convenient time, the court, in term time or vacation, shall hear and determine the case upon the original record of the hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court determines that such determination or modified determination is not in accordance with law, the court shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires.

STAY OF PROCEEDINGS AND EXCLUSIVE JURISDICTON

SEC. 367. The commencement of judicial proceedings under this Part shall not, unless specifically ordered by the court, operate as a stay of the review committee's determination. Notwithstanding any other provision of law, the jurisdiction conferred by this Part to review the legal validity of a determination made by a review committee pursuant to this Part shall be exclusive. No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under this Part.

NO EFFECT ON OTHER QUOTAS

SEC. 368. Notwithstanding any increase of any farm marketing quota for any farm as a result of

review of the determination thereof under this Part, the marketing quotas for other farms shall not be affected.

PART II—ADJUSTMENT OF QUOTAS AND ENFORCEMENT

GENERAL ADJUSTMENTS OF QUOTAS

SEC. 371. (a) If at any time the Secretary has reason to believe that in the case of corn, wheat, cotton, rice, or tobacco the operation of farm marketing quotas in effect will cause the amount of such commodity which is free of marketing restrictions to be less than the normal supply for the marketing year for the commodity then current, he shall cause an immediate investigation to be made with respect thereto. In the course of such investigation due notice and opportunity for hearing shall be given to interested persons. If upon the basis of such investigation the Secretary finds the existence of such fact, he shall proclaim the same forthwith. He shall also in such proclamation specify such increase in, or termination of, existing quotas as he finds, on the basis of such investigation, is necessary to make the amount of such commodity which is free of marketing restrictions equal the normal supply.

(b) If the Secretary has reason to believe that, because of a national emergency or because of a material increase in export demand, any national marketing quota for corn, wheat, cotton, rice, or tobacco should be increased or terminated, he shall cause an immediate investigation to be made to determine whether the increase or termination is necessary in order to effectuate the declared policy of this Act or to meet such emergency or increase in

export demand. If, on the basis of such investigation, the Secretary finds that such increase or termination is necessary, he shall immediately proclaim such finding (and if he finds an increase is necessary, the amount of the increase found by him to be necessary) and thereupon such quota shall be increased, or shall terminate, as the case may be.

(c) In case any national marketing quota for any commodity is increased under this section, each farm marketing quota for the commodity shall be increased in the same ratio.

(d) In the case of corn, whenever such proclamation specifies an increase in marketing quotas, the storage amounts applicable to corn shall be adjusted downward to the amount which would have been required to be stored if such increased marketing quotas had been in effect. Whenever in the case of corn, such proclamation provides for termination of marketing quotas, storage under seal shall no longer be required.

PAYMENT AND COLLECTION OF PENALTIES

SEC. 372. (a) The penalty with respect to the marketing, by sale, of wheat, cotton, or rice, if the sale is to any person within the United States, shall be collected by the buyer.

(b) All penalties provided for in Subtitle B shall be collected and paid in such manner, at such times, and under such conditions as the Secretary may by regulations prescribe. Such penalties shall be remitted to the Secretary by the person liable for the penalty, except that if any other person is liable for the collection of the penalty, such other person shall remit the penalty. The amount of such pen-

alties shall be covered into the general fund of the Treasury of the United States.

(c) Whenever, pursuant to a claim filed with the Secretary within one year after payment to him of any penalty collected from any person pursuant to this Act, the Secretary finds that such penalty was erroneously, illegally, or wrongfully collected, the Secretary shall certify to the Secretary of the Treasury for payment to the claimant, in accordance with regulations prescribed by the Secretary of the Treasury, such amount as the Secretary finds the claimant is entitled to receive as a refund of such penalty.[8]

The Secretary is authorized to prescribe regulations governing the filing of such claims and the determination of such refunds.

(d) No penalty shall be collected under this Act with respect to the marketing of any agricultural commodity grown for experimental purposes only by any publicly owned agricultural experiment station.[8]

REPORTS AND RECORDS

SEC. 373. (a) This subsection shall apply to warehousemen, processors, and common carriers of corn, wheat, cotton, rice, or tobacco, and all ginners of cotton, all persons engaged in the business of purchasing corn, wheat, cotton, rice, or tobacco from producers, and all persons engaged in the business of redrying, prizing, or stemming tobacco

[8] The italicized subsection was added by sec. 11 of the act entitled "An act to amend the Agricultural Adjustment Act of 1938, and for other purposes," Public, No. 470, 75th Cong., approved April 7, 1938.

for producers. Any such person shall, from time to time on request of the Secretary, report to the Secretary such information and keep such records as the Secretary finds to be necessary to enable him to carry out the provisions of this title. Such information shall be reported and such records shall be kept in accordance with forms which the Secretary shall prescribe. For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, the Secretary is hereby authorized to examine such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as he has reason to believe are relevant and are within the control of such person. Any such person failing to make any report or keep any record as required by this subsection or making any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500.

(b) Farmers engaged in the production of corn, wheat, cotton, rice, or tobacco for market shall furnish such proof of their acreage, yield, storage, and marketing of the commodity in the form of records, marketing cards, reports, storage under seal, or otherwise as the Secretary may prescribe as necessary for the administration of this title.

(c) All data reported to or acquired by the Secretary pursuant to this section shall be kept confidential by all officers and employees of the Department, and only such data so reported or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under this title.

MEASUREMENT OF FARMS AND REPORT OF PLANTINGS

SEC. 374. The Secretary shall provide, through the county and local committees, for measuring farms on which corn, wheat, cotton, or rice is produced and for ascertaining whether the acreage planted for any year to any such commodity is in excess of the farm acreage allotment for such commodity for the farm under this title. If in the case of any farm the acreage planted to any such commodity on the farm is in excess of the farm acreage allotment for such commodity for the farm, the committee shall file with the State committee a written report stating the total acreage on the farm in cultivation and the acreage planted to such commodity.

REGULATION

SEC. 375. (a) The Secretary shall provide by regulations for the identification, wherever necessary, of corn, wheat, cotton, rice, or tobacco so as to afford aid in discovering and identifying such amounts of the commodities as are subject to and such amounts thereof as are not subject to marketing restrictions in effect under this title.

(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this title.

COURT JURISDICTION

SEC. 376. The several district courts of the United States are hereby vested with jurisdiction specifically to enforce the provisions of this title. If and when the Secretary shall so request, it shall be the duty of the several district attorneys in their respective districts, under the direction of the At-

torney General, to institute proceedings to collect the penalties provided in this title. The remedies and penalties provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law.

SUBTITLE D—MISCELLANEOUS PROVISIONS AND APPROPRIATIONS

PART I—MISCELLANEOUS

* * * * *

UTILIZATION OF LOCAL AGENCIES

SEC. 388. (a) The provisions of section 8 (b) and section 11 of the Soil Conservation and Domestic Allotment Act, as amended, relating to the utilization of State, county, local committees, the extension service, and other approved agencies, and to recognition and encouragement of cooperative associations, shall apply in the administration of this Act; and the Secretary shall, for such purposes, utilize the same local, county, and State committees as are utilized under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended. The local administrative areas designated under section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended, for the administration of programs under that Act, and the local administrative areas designated for the administration of this Act shall be the same.

(b) The Secretary is authorized and directed, from any funds made available for the purposes of the Acts in connection with which county committees are utilized, to make payments to county commit-

tees of farmers to cover the estimated administrative expenses incurred or to be incurred by them in cooperating in carrying out the provisions of such Acts. All or part of such estimated administrative expenses of any such committee may be deducted pro rata from the Soil Conservation Act payments, parity payments, or loans, or other payments under such Acts, made unless payment of such expenses is otherwise provided by law. The Secretary may make such payments to such committees in advance of determination of performance by farmers.

PERSONNEL

SEC. 389. The Secretary is authorized and directed to provide for the execution by the Agricultural Adjustment Administration of such of the powers conferred upon him by this Act as he deems may be appropriately exercised by such Administration; and for such purposes the provisions of law applicable to appointment and compensation of persons employed by the Agricultural Adjustment Administration shall apply.

SEPARABILITY

SEC. 390. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances, and the provisions of the Soil Conservation and Domestic Allotment Act, as amended, shall not be affected thereby. Without limiting the generality of the foregoing, if any provision of this Act should be held not to be within

the power of the Congress to regulate interstate and foreign commerce, such provision shall not be held invalid if it is within the power of the Congress to provide for the general welfare or any other power of the Congress. If any provision of this Act for marketing quotas with respect to any commodity should be held invalid, no provision of this Act for marketing quotas with respect to any other commodity shall be affected thereby. If the application of any provision for a referendum should be held invalid, the application of other provisions shall not be affected thereby. If by reason of any provision for a referendum the application of any such other provision to any person or circumstance is held invalid, the application of such other provision to other persons or circumstances shall not be affected thereby.

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B. H. R. REPT. 1645, 75TH CONG., 2D SESS.

AGRICULTURAL ADJUSTMENT ACT OF 1937

NOVEMBER 27, 1937.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. JONES, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H. R. 8505]

The Committee on Agriculture, to whom was referred the bill (H. R. 8505) to provide for the conservation of national soil resources and to provide an adequate and balanced flow of agricultural commodities in interstate and foreign commerce, having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

GENERAL STATEMENT

During the last 15 years, the problems which have beset agriculture have commanded the attention of ever administration up to the present time. During these years, bills proposing solutions of these problems have been introduced in every Con-

gress. Every such proposal has received the careful consideration of the committees of Congress charged with the formulation of agricultural legislation. In 1933, on the recommendation by such committees, the Agricultural Adjustment Act was enacted. That act was in operation just short of 3 years before its acreage-adjustment provisions were declared invalid by the Supreme Court. Thereafter the Soil Conservation and Domestic Allotment Act was enacted. That act had as its primary purpose the conservation and rebuilding of the soil resources of the Nation. It is accomplishing this purpose. The incidental effect which it has had on the acreage devoted to major soil-depleting crops has not, however, been sufficient to prevent the production of large surpluses, which, unregulated, have congested the channels of interstate and foreign commerce. Hence legislation in addition to the Soil Conservation and Domestic Allotment Act is necessary at this time.

Legislation to meet the present farm problem should not be focused on the control of acreage, except to the extent of the incidental control brought about by inducing farmers to carry out recognized soil-conservation and soil-building practices on their farms. Such legislation should not be posited on an economy of scarcity. Nor should such legislation be designed to meet a temporary emergency. It should, on the contrary, encourage the abundant production of agricultural commodities, and provide for the storage of warehousing of the production above current needs in order to have such commodities available at reasonable prices in years of drought or other adverse conditions. Such legislation should, by means of loans, assist

farmers to cooperate with Government in reaching this desirable objective. Such legislation should provide means of regaining our export markets in farm products to the end that such products may flow freely into the markets of the world. As an aid to accomplishing this purpose, and as a benefit to both farmers and consumers of farm products in the United States, it should provide means for examining the freight rate structure so far as it relates to freight rates on farm products. And finally it should encourage research into the possibilities of new uses and new markets for agricultural commodities in cooperation with the State agricultural colleges and other State agencies.

During the first session of the Seventy-fifth Congress, extended and careful consideration was given by the committee to various proposals which had been referred to it. It sought information with respect to these proposals, and their probable effects, in conference both with the leaders of the various farm organizations and with the representatives of the Department of Agriculture. During the adjournment of Congress virtually every member of the committee discussed the various proposals with the farmers in his district. Many of the members of the committee attended one or more of the hearings conducted by the Senate Committee on Agriculture and Forestry during the past summer and fall. The committee has also had the benefit of the many hearings, reports, and studies dealing with the farm problem which have been published during the last 15 years.

The bill (H. R. 8505) herewith reported approaches the farm problem on four major fronts. First. It strengthens the Soil Conservation and

Domestic Allotment Act and more clearly defines the powers of the Secretary of Agriculture under that act. Second. It provides for loans on agricultural commodities in order to enable farmers to finance the storage and warehousing of commodities in years of excessive yields so that surpluses may be kept off the market, and so that in years of drought or other adverse conditions, supplies of agricultural commodities will be plentiful. Third. In years of excessive production it provides for the withholding from market in interstate and foreign commerce of surpluses of the five major nonperishable agricultural commodities for the purpose of removing the depressing effect which such surpluses exert on such commerce. Fourth. It provides means by which markets at home and abroad for agricultural products may be restored and new ones may be found. This can well be regarded as the most important single feature of the bill. While provision is made for handling excessive surpluses temporarily through moderate control features, the more important and fruitful approach to the solution of the farm problem is in expansion of domestic and foreign markets.

The bill makes it the duty of the Secretary of Agriculture to use the $100,000,000 available annually under section 32 of the 1935 amendments in disposing of farm products at home, and in expanding foreign markets for surplus farm commodities and their products abroad. By paying small losses the committee feels that wider uses for such products can be found both here and in foreign countries. The bill contemplates means by which agricultural products may get to the

markets more cheaply. The Secretary of Agriculture is given power to complain before the Interstate Commerce Commission with respect to rates, tariffs, and charges on agricultural products, and the Secretary is to aid cooperative associations in their complaints on such matters. Finally, the bill provides for research into the possibilities of new uses and markets for farm products.

The declaration of policy of the bill sets forth its objectives, which are to accomplish the above purposes.

CONSTITUTIONAL BASIS

The various provisions of the bill are within the Federal power under the Constitution.

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MARKETING QUOTA PROVISIONS

The marketing quota provisions represent exercises of the power of Congress over interstate and foreign commerce. Citation of cases is unnecessary to show that Congress has the power to regulate marketing which occurs directly in interstate and foreign commerce. It is familiar doctrine, too, that the commerce power of Congress is not limited to the regulation of the actual movement of goods in interstate and foreign commerce. The power extends to encompass any object which burdens or affects interstate commerce, even if by so doing intrastate commerce is regulated. Federal power to remove restraints on interstate and foreign commerce is not limited to restraints which occur in that commerce. Thus future trading on commodities exchanges (*Chicago Board of Trade* v.

Olsen (1923) 262 U. S. 1); meat packing (*Stafford* v. *Wallace* (1922), 258 U. S. 495); buying and selling of livestock on a commission basis (*Tagg Brothers and Moorhead* v. *United States* (1930), 280 U. S. 420); intrastate transportation by railroad (*Shreveport case* (1913), 234 U. S. 342); conspiracies to restrain interstate commerce (*Bedford Cut Stone Company* v. *Stonecutters' Association* (1927), 274 U. S. 37); *Local 167* v. *United States* (1934), 291 U. S. 293); and unfair labor practices (*Labor Board* v. *Jones and Laughlin Steel Corporation* (1937), 301 U. S. 1); (*Virginian Railway* v. *Federation* (1937), 300 U. S. 515) do not constitute interstate commerce. Yet in each one of the above cases the exercise of Federal power has been upheld. The principle underlying such decisions is that the transactions to which the statutes there construed related did have a "direct and immediate" effect on interstate commerce.

The question of whether the connection between the subject regulated and interstate commerce is sufficiently close and direct to justify the regulation is one for Congress to determine. If there is a reasonable basis for a conclusion reached by Congress that the subject of regulation does affect interstate commerce, then the subject is one within Federal control and the exercise of the power is valid. The question then becomes one of determining whether the facts are such that Congress may reasonably conclude that the matters regulated do have an effect on interstate and foreign commerce.

As said by Chief Justice Taft in *Stafford* v. *Wallace* (1922) (258 U. S. 495, at p. 520):

> Whatever amounts to more or less constant practice and threatens to obstruct or

> unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This Court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent.

See also Chief Justice Hughes in *Labor Board* v. *Jones and Laughlin Steel Corporation* (301 U. S. 1, at p. 37).

The studies during the past 15 years conducted by the committees of Congress amply demonstrate that there is more than a reasonable basis for concluding that the marketing of excessive supplies of the major agricultural commodities, tobacco, field corn, wheat, cotton, and rice, do have a direct and immediate effect on interstate and foreign commerce in these commodities as well as on interstate and foreign commerce generally. They demonstrate, too, that deficiencies in marketing farm commodities in interstate and foreign commerce result in diminutions of and burdens upon that commerce. These studies further demonstrate that if a regular even flow of such commodities into interstate and foreign commerce could be secured, then the disastrous consequences following such irregularity in marketing could be avoided.

Following the discussion of the marketing quota provisions relating to each of these commodities there are set forth analyses of statistics of the Department of Agriculture relating to each of these major commodities. From these figures it can be

said that, to a greater or less degree, as applied to each of these commodities:

(1) The commodity is of such substantial volume, is so valuable, and the need for it is so essential for national well-being that if interstate and foreign commerce in the commodity can be regulated in the national public interest, it should be.

(2) Most of the commodity moves almost directly from the place where produced into markets outside the State or, in some cases, into foreign markets. In cases where it does not move immediately into interstate or foreign markets in the form in which produced, it does so move in another, slightly changed, form or it is sure to do so. In both these cases the commodity is produced for an outside market in some form.

(3) In every case marketing for ultimate consumption (in any form) in the State where produced is a negligible part of the whole production.

(4) In all cases the factors determining whether or not the commodity will be marketed, when it will be, and the price at which it will be, are factors referable solely to the national or international market for which it is sold—not the local market.

(5) Excessive supplies (regardless of their cause) overtax the facilities for moving the commodity, bring to the markets amounts which they cannot absorb, and cause financial distress to producers and others engaged in the industry.

(6) Diminution in interstate and foreign commerce in other articles from regions of production to farming regions follows disruption of interstate and foreign commerce in such commodities.

(7) Deficient supplies leave idle transportation and marketing facilities and cause unwarranted high prices to consumers.

(8) If the excessive surpluses can be kept off the interstate and foreign market in years of plenty and fed into it in years of low production, stable orderly flow of interstate and foreign commerce will be assured.

* * * * *

TITLE III. MARKETING QUOTAS

This title contains the provisions relating to marketing quotas which apply to tobacco, corn, wheat, cotton, and rice. The title also includes the provisions relating to the review of marketing quotas established under it. In general, it can be said that the title provides in the case of each of those commodities a method by which excessive supplies of the commodity may be prevented from entering into interstate and foreign commerce in years in which the effect of marketing such supplies would be to upset the orderly marketing of such commodity.

Under the bill the marketing quota provisions relating to each of the commodities is set forth in a separate part. The various parts contains some provisions which are similar and are treated together here. Each part has its legislative findings which describe the effect on interstate and foreign commerce of the marketing of excessive and deficient supplies. In the case of each commodity a definition of "total supply," "carry-over," "normal supply," and, except in the case of cotton, "reserve supply level" is set forth. Total supply is carry-over from the previous year plus estimated

production. Normal supply is the 10-year average of domestic consumption plus exports, to which is added a percentage of that amount to assure a normal carry-over. Reserve supply level is an amount in excess of average domestic consumption and exports plus a carry-over adequate to insure domestic consumption and export needs at all times.

If the carry-over plus estimated production (total supply) exceeds the normal supply in the case of cotton, wheat, rice, and field corn, or exceeds the reserve supply level in the case of tobacco, by more than a stated percentage, marketing quotas go into effect. In the case of each commodity, after the determination of and announcement by the Secretary of facts on the basis of which marketing quotas are effective, he is to conduct a referendum of all farmers who would be subject to the quota on the commodity. If more than one-third of the farmers voting in the referendum oppose the quota, the quota becomes ineffective.

Each part has a provision for terminating or increasing quotas when the supply gets below an amount determined with reference to the amount which will be available for marketing. Each part (except field corn) requires the termination of marketing quotas if a national emergency or a material increase in export demand warrants such termination. Each part (except field corn) authorizes the Secretary to obtain information from persons acquiring the commodity from the farmer to enable the Secretary to carry out the part to which the commodity relates, and such information must be kept confidential. It can be disclosed only in a suit or administrative hearing involving the administration of the provisions.

There is inserted here a table which, in brief compass, sets forth the various important dates on which action is taken under the various marketing-quota provisions. An examination of this table will give more clearly than the technical explanation of the provisions of the bill an idea of exactly when the findings are made and announced and when the quotas are effective. Under the table the assumption is made that marketing quotas are to be in effect on the crop harvested in 1940; 1940 has been selected to avoid special rules fixed for 1938 and 1939 in certain cases.

* * * * *

A discussion of each of the several parts of the title (to the extent that they vary from each other) is set forth under a heading relating to the commodity.

PART I.—MARKETING QUOTAS—TOBACCO

The marketing quota provisions relating to tobacco divide the various kinds of tobacco according to their recognized classification by the Department of Agriculture. This part is applicable to each of these kinds of tobacco severally. That is, each kind of tobacco is treated as if it were a separate commodity. As used in the part, the word "tobacco" means "kind of tobacco," and the word "tobacco" is used in the same sense in this report. The kinds so included are flue-cured tobacco, fire-cured tobacco, dark air-cured tobacco, burley tobacco, Maryland tobacco, and cigar-filler and cigar-binder tobacco. A specification of the types of tobacco included in each of these kinds is set forth in section 303 (a).

Whenever on November 15 the Secretary finds that on July 1 (in the case of flue-cured) or October 1 (in the case of other kinds) the carry-over plus estimated production of tobacco exceeded the reserve supply level, he is to so announce and the marketing quotas are to be in effect for tobacco marketed during the marketing year next following. That is, for tobacco harvested in the next year. The reserve supply level of any kind of tobacco is 5 percent in excess of the normal supply. The normal supply is a normal year's domestic consumption and exports plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports.

In the announcement that a marketing quota shall be in effect the Secretary is to specify in pounds of tobacco the quantity which may be marketed during the marketing year next following. That amount is an amount which would make available for marketing during that year a supply of tobacco equal to the reserve supply level. This is the national marketing quota. It is an amount in pounds of tobacco. The Secretary's announcement must be made not later than December 1.

Within 30 days after the issuance of his announcement the Secretary is required to conduct the referendum.

A special rule is provided for the determination and announcement of any marketing quota for the 1938–39 marketing year. The determination of supplies is to be made as of January 15, 1938, and announced not later than February 1, and the announcement of the result of the referendum is to be made prior to March 1, 1938.

When the Secretary has determined the amount of the national marketing quota he is to apportion that amount as provided in section 305. This apportionment is for the purpose of dividing up the total amount which may be marketed from the production of the year among the States and among the farms in each State.

The amount of the national marketing quotas (less amounts for new farms, etc., under section 305 (c)) is to be apportioned by the Secretary among the several States on the basis of the total production of tobacco in each State during the 5 calendar years immediately preceding the year in which the quota is announced (sec. 305 (a)). In making such apportionment, he is to make adjustments determined to be necessary to make correction for abnormal conditions in production, for small farms, and for trends in production during the 5-year period, and on account of diversion from tobacco production under agricultural adjustment and soil-conservation programs. The amount so apportioned to each State is to be apportioned, through local committees of farmers, among farmers producing tobacco on the basis of their past production of tobacco; land, labor, and equipment available for tobacco production; crop-rotation practices; and soil and other physical facilities for the production of tobacco. A minimum marketing quota to farms is provided. (This minimum here discussed does not apply to farms producing tobacco for the first time within 5 years.)

The minimum allotment to a farm is a stated amount, or the farmer's highest base acreage, whichever is lower. The flat minimum is 3,200 pounds in the case of flue-cured and 2,400 pounds

in the case of other kinds. The minimum amount based on highest base acreage is the average tobacco production of the farm during the preceding 3 years adjusted upward to equal the normal production of its highest tobacco acreage under the previous 3 years of adjustment and conservation programs.

Not to exceed 5 percent of the national marketing quota is to be allotted, through local committees, to farms on which tobacco is produced (to be marketed in the quota year) for the first time in 5 years, and to small farms to increase the allotments to them. This allotment is to be made on the basis of land, labor, and equipment available for tobacco production, crop-rotation practices, and the soil and other physical facilities affecting the production of tobacco. The allotment to the farms on which tobacco is produced for the first time in 5 years is not to exceed 75 percent of the allotment which would otherwise be made to the farm.

Farm-marketing quotas may be transferred but only in such manner and subject to such conditions as may be provided by the Secretary.

Any person who knowingly acquires tobacco from a producer if the tobacco is marketed by him from a farm in excess of the farm marketing quota, is subject to a penalty. The penalty is 50 percent of the market price, or 3 cents per pound in the case of flue-cured, Maryland, or burley, or 2 cents per pound in the case of all other kinds, whichever is higher. The purchaser, if he acquires the tobacco by purchase, may deduct the penalty from the purchase price. Penalties are to be remitted to the Secretary and are to accrue

to the United States. Failure on the part of persons acquiring tobacco from farmers, or engaged in performing certain acts with respect thereto for farmers, to furnish information or keep records subjects the offender to a fine of not more than $500.

The Secretary is given express authority to issue regulations with respect to the time and manner of the payment of penalties, the identification of marketings, and such other regulations as he deems necessary for the enforcement of the part.

EFFECT OF MARKETING ON INTERSTATE AND FOREIGN COMMERCE

The conclusion of the committee that the marketing of tobacco exerts a substantial and direct effect upon interstate and foreign commerce is more than justified by the following summary of the facts and figures relating thereto derived from available statistics of the Department of Agriculture.

ECONOMIC DATA RELATING TO TOBACCO

There are some 750,000 farm families engaged in the primary industry of producing and marketing tobacco. Receipts by these families for tobacco marketed during the period 1919–28 averaged about $280,000,000 per year. Although each family places on the market all or substantially all of the tobacco which it produces, sales are made with scant knowledge of or regard for the action taken by other persons engaged in similar work.

Tobacco is sold mainly through warehousemen or commission merchants, except in the case of Mary-

land, cigar-leaf and the dark-air and fire-cured types of tobacco where sales are made at the farm or through producers' cooperative-marketing associations. The operations of this group deal directly with the sale of the tobacco by producers to representatives of manufacturers and leaf-tobacco dealers, generally at established places of business. Around 1,300,000,000 pounds of tobacco have been marketed annually in the United States and in Puerto Rico during the last 10 years.

Control and direction of the great part of the manufacture of tobacco products is in the hands of a limited number of corporations. The prices offered to farmers by these corporations determine the price level on the market, and the prices at which the manufactured products are sold are largely controlled by them.

The Federal Trade Commission in its agricultural income inquiry states that in 1934, 13 principal tobacco manufacturers purchased the equivalent of 64 percent of the crop, and the three largest of such manufacturers a quantity equal to 46.2 percent of the crop. These same 13 corporations sold over 97 percent of the cigarettes, over 90 percent of the smoking tobacco, over 75 percent of the chewing tobacco, and over 98 percent of the snuff produced in the United States in 1934. The three companies reporting, respectively, the largest sales of cigarettes, of smoking tobacco, of chewing tobacco, and of snuff accounted for 80.1 percent, 64.8 percent, 68.7 percent, and 95.3 percent, respectively, of the 1934 production of these products.

TOBACCO IS SOLD ON A NATION-WIDE MARKET AND MOVES ALMOST WHOLLY IN INTERSTATE AND FOREIGN COMMERCE

When tobacco is placed on the market by producers, it is purchased by buyers representing manufacturers and dealers located throughout the world. Immediately after purchase, tobacco is either moved by the purchasers to redrying plants or, in the case of types which do not require redrying, shipped to plants of dealers or manufacturers. The types which do not require redrying constitute about one-fourth of the total poundage of tobacco. Redrying requires only a few hours, the tobacco being moved through the plants as speedily as possible.

From two-thirds to three-fourths of all of the tobacco processed in the United States is purchased on the markets in States other than those where the processing occurs. The principal tobacco products, for example cigarettes, are made up of different kinds of tobacco blended in a manner designed to secure certain taste effects and burning qualities. These different kinds of tobacco, produced in different parts of the country are complementary to each other for some purposes and must move in interstate commerce before they can be blended. Tables I and II appended hereto show the extent to which burley and flue-cured tobacco must pass in interstate commerce before being processed. Table III, which shows the number of establishments, by States, engaged in the processing of tobacco, is further corroborative evidence.

The average production of burley tobacco is indicated in table I, in the 3 years 1931–33 amounted

to 376,352,000 pounds. In the States in which such tobacco was produced, the quantity processed was less than 18 percent of the total production therein.

The similar conditions are true with respect to flue-cured tobacco as indicated in table II. Production in the 3 years 1931–33 averaged 595,000,000 pounds. In the States in which such tobacco was produced, the quantity processed could not have exceeded about one-third of this amount. Actually the amount was much smaller as this figure of one-third is calculated without taking into account significant shipments of unprocessed tobacco among such States.

A preponderant amount of the kinds of tobacco other than flue-cured and burley tobacco also moves in interstate and foreign commerce. Commerce in fire-cured and dark air-cured tobacco is similar to commerce in flue-cured and burley tobacco. In 1935, 362 pounds of tobacco were processed in Maryland, while 27,935,000 pounds were produced in the State. A comparison for cigar-leaf tobacco similar to that shown for flue-cured and burley tobacco indicates that less than one-third of the total production of cigar-leaf tobacco is processed in the States in which the tobacco is produced.

Not only does the greater proportion of all types of tobacco move from the markets into interstate commerce, but large quantities of tobacco are purchased on the markets by foreign manufacturers on their own account and through orders placed with dealers. The total exports during the last decade amounted to a little over 70 percent of the domestic consumption of all tobacco.

FARMERS UNABLE TO ORGANIZE EFFECTIVELY FOR MARKETING OF TOBACCO

History reflects clearly the inability of tobacco farmers to organize effectively for the purpose of marketing their product. Numerous tobacco cooperative marketing associations have been formed by producers, and at some time during the last 2 decades one or more such associations have existed for types of tobacco covering over 95 percent of the total tobacco production of the United States and Puerto Rico. Although these associations have attempted progressively to benefit from the experience of previous associations, to date practically all of them have failed to bring about orderly marketing of their tobacco. Most of them have discontinued operation entirely.

Probably the prices offered for tobacco in any year are calculated to bring forth marketings in subsequent years in line with the quantity of tobacco desired. Farmers are unable, however, to recognize the limits of the market or to act collectively in offering on the market this desired quantity. They tend, because of fixed costs and available production facilities, to produce a maximum quantity of tobacco without regard to market demands. As a result, marketings frequently exceed the quantity desired and in order to avoid recurrence of a similar situation as well as to offset larger handling and storage charges buyers pay prices which may be disastrously low for farmers.

There is little if any relationship between the prices received by farmers and the price paid by the consumer for manufactured tobacco products. The

wholesale and retail prices at which tobacco products are sold are influenced by the unusually great amount of fixed or invariable elements of cost. For example, the Federal tax on a package of 20 cigarettes, weighing not more than 3 pounds per thousand, regardless of the quality, price of unmanufactured tobacco, and general business conditions, remains unchanged. In some instances advertising policies have been directed toward the creation of brand and taste preferences which would persist notwithstanding the stability of the retail price.

The average price received by farmers for all types of tobacco in the United States declined from 18.3 cents per pound in 1929 to 10.5 cents per pound in 1932, and as a result farmers' income from tobacco declined from 281 million dollars to 107 million dollars for the same period. At the same time, the wholesale price of cigarettes was advanced from $6 per thousand to $6.85 per thousand, and the profits of 52 leading tobacco manufacturers increased from 134 million dollars to 146 million dollars.

From the fact that manufacturers follow fixed-price policies (relatively), that the taxes on tobacco products do not vary, and that the demand for manufactured tobacco is relatively inelastic, the normal response to lowered farm prices, i. e., increased consumption with the consequent elimination of surpluses, does not follow. In fact, as the quantity consumed is relatively constant, producers with excessive marketings are in an unusually weak bargaining position and may suffer from unduly depressed prices which react on them but do not greatly alter the level of consumption.

The conditions attached to the marketing of tobacco widely affect those persons to whom farmers may become indebted. The interests of the bankers, merchants, fertilizer dealers, and insurance companies lie in the existence of a satisfactory market for tobacco. The impairment of income resulting from the disorderly marketing increases the hazards of those who extend credit to farmers engaged in production and marketing of tobacco.

Table IV indicates the number of farms changing ownership through voluntary sales, tax-delinquency sales and mortgage-foreclosure sales and bankruptcy. It will be noted that voluntary sales declined drastically as a result of the disorderly situation existing during years of excessive marketing while the number of tax-delinquency sales and mortgage-foreclosure sales increased very substantially.

The number of bank suspensions in those States in which the sale of tobacco affords an important source of income has been excessively great in those years in which a disorderly situation has existed in these markets. Table V shows that, in five important tobacco States, from 1929 to 1931 while the farm value of tobacco was reduced by more than one-half, the number of bank suspensions trebled.

As in the case of other agricultural commodities, the quantity of tobacco which farmers have to market is influenced by natural causes beyond their control. Statistics with respect to tobacco production indicate that, notwithstanding the fact that the plants are transplanted from seedbeds to the field and the crop undergoes intensive till-

age, the yield per acre of all tobacco has varied within the last 10 years from a low of 725 pounds in 1932 to a high of 903 pounds in 1935. Furthermore, the annual acreage is influenced by weather conditions when the plants are set and by the effect of disease on plants. The lack of moisture or attacks of disease may substantially reduce the acreage of tobacco planted, and conversely, very favorable conditions may result in plantings larger than usual. Under such circumstances disorderly marketing conditions can very easily develop in years of high yield.

DISORDERLY MARKETING AFFECTS INTERSTATE AND FOREIGN COMMERCE

The disorderly marketing of tobacco affects the volume marketed in interstate and foreign commerce during a particular marketing season as well as in subsequent years. It causes overcrowding and congestion of existing facilities. Some of the lower grades of tobacco which normally are marketable remain unsold. With large and burdensome stocks on hand, manufacturers and dealers offer lower prices. As a consequence, marketings by farmers in subsequent years are reduced. Under such conditions, with no means of regulating marketings, farmers often produce for market more or less than can be handled in an orderly manner.

Disorderly marketing which causes sharp reductions in the price of tobacco tends to injure and destroy commerce therein. For example, a survey conducted in Virginia showed that growers of flue-cured and fire-cured tobacco were unable to market from 8 to 15 percent of their 1931 and 1932 crops.

With improved market conditions, growers estidated that less than 2 percent of the 1933 and 1934 crops was not sold. While similar estimates are not available for other States, in all probability a considerable quantity of tobacco could not be sold from the 1931 and 1932 crops.

Disorderly marketing of tobacco has created such intolerable conditions in the areas affected as to result in some instances in physical violence or complete stoppage for a period of the normal marketing process. Notable instances of this were the difficulties which culminated in the so-called night rider activities in the tobacco areas of Kentucky and Tennessee; the widespread closing of tobacco markets for varying periods of time, which followed the drastic declines of tobacco prices after the World War; and a similar closing of auction markets because of low prices during the early part of the 1933 tobacco-marketing season.

With the inauguration of the Agricultural Adjustment Administration tobacco program including the 1933 marketing agreements, designed to adjust marketings to demand, immediate relief was experienced in dealing with the latter situation. Markets were reopened; the spoilage of tobacco on markets was stopped; prices were advanced to levels acceptable to farmers; and an orderly flow of tobacco in the commerce was resumed. A basis of the willingness of tobacco manufacturers to pay higher prices on the market for the 1933 crop than had been paid prior to the closing of the markets, was the assurance which they had that the operation of the tobacco program with respect to the 1934 crop would tend to keep the quantity of that crop offered on the market in line with demand.

Disorderly marketing causes a disparity between the price for this commodity and industrial products, with a consequent diminution of the volume of commerce in industrial products. Table VI, which shows the relation of farm income to new car registrations, shows in a forceful manner the reduction of trade which follows the diminution of agricultural income.

In 1926, when the total cash income of America's farmers was $9,658,000,000 this group spent approximately $2,867,000,000 for goods used in production and $4,478,000,000 for goods for living. In 1932, when disorderly marketing conditions had reduced the cash income of farmers to $4,201,000,000, they reduced their expenditure for goods for use in production to $1,351,000,000 and their expenditure for consumers' goods to $1,302,000,000. The decline in trade associating with disorderly marketing conditions in agriculture, as well as the growth of trade associated with orderly conditions, is very vividly shown by the extent to which carloadings destined from industrial areas for the southeastern agricultural area increased rapidly from 1932 to 1933 and 1934.

Total shipments, by groups of commodities

Group	Year 1 (July 1, 1932, to June 30, 1933)	Year 2 (July 1, 1933 to June 30, 1934)	Percent of increase year 2 over year 1	Year 3 (July 1, 1934, to June 30, 1935)	Percent of increase year 3 over year 2	Percent of increase year 3 over year 1
	Pounds	*Pounds*		*Pounds*		
Agricultural	56,473,000	99,278,000	75.8	136,480,000	37.5	141.
Domestic and personal	115,553,000	182,309,000	57.6	279,778,000	53.5	141.9
Industrial and commercial	821,431,000	1,179,189,000	43.6	1,604,107,000	36.0	95.1
General	1,100,499,000	1,445,052,000	31.3	2,121,363,000	46.8	92.8
Total	2,094,056,000	2,905,828,000	38.8	4,141,728,000	42.5	97.8

Total shipments of manufactured commodities from the industrial area into the southeastern region over four important railroads, as indicated in the above table, showed a gain of 38.8 percent in year 2, and 97.8 in year 3. The percentage increase was greatest in year 3 in the case of domestic and personal goods, the increase being 141.9 percent.

It is obvious from the foregoing that the disorderly marketing of an excessively abnormal supply affects, burdens, and obstructs foreign and interstate commerce.

* * * * * * *

TABLE II.—*Tobacco, flue-cured; distribution of production and processing by specified States*

State	3-year average production, 1931-32 [1]	Percentage distribution of production	Amount processed in State [2]	Percentage distribution of processed tobacco	Excess production over processed tobacco
	Pounds		*Pounds*		*Pounds*
United States, total	595,087,000	100.0	282,500,000	100.0	312,587,000
California	0	0	8,192,000	2.9	−8,192,000
Florida	3,122,000	0.5	0	0	3,122,000
Georgia	42,887,000	7.2	0	0	42,887,000
Kentucky	0	0	25,708,000	9.1	−25,708,000
Missouri	0	0	848,000	.3	−848,000
New York	0	0	585,000	.2	−585,000
North Carolina	432,186,000	72.6	152,832,000	54.1	279,354,000
Ohio	0	0	5,937,000	2.1	−5,933,000
South Carolina	65,929,000	11.1	0	0	65,929,000
Virginia	50,963,000	8.6	74,862,000	26.5	−23,899,000
All other	0	0	13,560,000	4.8	−13,560,000

[1] Compiled from reports of the Bureau of Agricultural Economics.

[2] Compiled from reports of the Bureau of Internal Revenue showing the amount of tobacco by types put into process by collecting districts. Leaf from which stem was not removed was converted to farm weight on the basis of 1 pound processing weight being equivalent to 1.129 pounds farm weight. Leaf from which stem had been removed converted to farm weight on the basis of 1 pound processing weight being equivalent to 1.447 pounds farm weight.

TABLE III.—*Number of factories manufacturing tobacco products*

District	Number of factories [1]			
	In business Jan. 1, 1935	Opened	Closed	In business Jan. 1, 1936
Arkansas	1	0	0	1
First California	13	0	0	13
Sixth California	14	2	3	13
Colorado	2	0	0	2
Connecticut	9	0	0	9
Delaware	1	0	0	1
Florida	3	2	1	4
Georgia	1	0	0	1
First Illinois	51	5	6	50
Eighth Illinois	42	1	8	35
Indiana	30	3	1	32
Iowa	18	1	2	17
Kansas	5	0	1	4
Kentucky	41	5	6	40
Louisiana	1	0	1	0
Maryland	2	0	0	2
Massachusetts	28	1	4	25
Michigan	23	1	4	20
Minnesota	23	1	4	20
First Missouri	11	0	1	10
Sixth Missouri	1	0	0	1
Montana	3	1	0	4
Nebraska	7	1	0	8
New Hampshire	2	0	0	2
First New Jersey	1	0	0	1
Fifth New Jersey	13	2	2	13
First New York	21	0	0	21
Second New York	44	3	3	44
Third New York	9	1	1	9
Fourteenth New York	9	0	1	8
Twenty-first New York	32	0	2	30
Twenty-eighth New York	27	3	5	25
North Carolina	12	1	0	13
First Ohio	17	1	2	16
Tenth Ohio	8	1	1	8
Eleventh Ohio	1	0	0	1
Eighteenth Ohio	37	0	6	31
Oregon	2	0	0	2
First Pennsylvania	65	8	7	66
Twelfth Pennsylvania	7	0	1	6
Twenty-third Pennsylvania	17	1	1	17
Rhode Island	4	1	0	5
South Carolina	2	0	0	2
South Dakota	1	0	0	1
Tennessee	17	2	5	14
First Texas	3	0	2	1
Second Texas	1	0	1	0
Utah	1	0	0	1
Virginia	8	0	1	7
Washington	1	1	1	1

[1] Includes only those producing a taxable product, excluding 241 quasi manufacturers.

TABLE III.—*Number of factories manufacturing tobacco products*—Continued

District	Number of factories			
	In business Jan. 1, 1935	Opened	Closed	In business Jan. 1, 1936
West Virginia	6	1	0	7
Wisconsin	40	0	2	38
Total, 1935	738	50	86	702
Total, 1934	765	65	92	738
Increase	0	0	0	0
Decrease	27	15	6	36

Source: Annual Report of the Commissioner of Internal Revenue, 1936.

TABLE IV.—*Number of farms changing ownership by various methods*

[Number per 1,000 farms]

	Virginia	North Carolina	Georgia	Kentucky	Tennessee	United States
Voluntary sales and trades[1]—12 months beginning Mar. 16:						
1929	16.3	19.1	17.5	30.0	18.5	23.7
1930	13.7	16.5	10.9	27.2	16.7	19.0
1931	9.8	11.0	10.6	19.0	18.0	16.2
1932	14.6	13.5	16.2	21.0	19.5	16.8
1933	12.6	19.0	18.8	20.1	20.0	17.8
1934	16.8	20.0	18.6	23.4	23.5	19.4
1935	20.6	25.4	21.7	28.9	28.7	24.0
Delinquent tax sales—12 months beginning Mar. 16:						
1929	2.6	10.8	3.5	8.4	2.3	5.1
1930	6.7	22.3	5.9	10.3	3.6	7.4
1931	9.5	35.6	10.0	21.9	10.1	13.3
1932	15.3	43.8	13.7	17.0	14.5	15.3
1933	13.6	25.1	11.9	10.1	8.1	11.1
1934	5.1	17.3	6.3	6.9	5.6	7.3
1935	3.8	10.7	4.0	5.5	4.1	5.9
Foreclosure of mortgages, bankruptcy, etc.[2]—12 months beginning Mar. 16:						
1929	10.4	15.0	18.5	12.6	8.8	15.7
1930	15.2	20.0	27.4	12.1	10.9	16.7
1931	20.3	32.6	26.8	17.9	23.0	28.4
1932	28.0	40.8	34.9	31.0	34.2	38.8
1933	19.6	29.6	24.3	16.1	24.2	28.0
1934	14.6	15.0	11.8	14.9	16.7	21.0
1935	15.1	15.2	12.5	15.8	14.3	20.3

[1] Including contracts to purchase (but not options).

[2] Including loss of title by default of contract, sales to avoid foreclosure, and surrender of title or other transfers to avoid foreclosure.

Compiled from reports of the Bureau of Agricultural Economics.

TABLE V.—*Number of bank suspensions and farm value of tobacco, Kentucky, Tennessee, Virginia, North Carolina, and South Carolina, 1922–32*

Year	Total for 5 States	Farm value of tobacco	Year	Total for 5 States	Farm value of tobacco
1922	28	$232,200,000	1930	189	$162,200,000
1923	51	222,200,000	1931	192	99,800,000
1924	49	181,600,000	1932	124	85,400,000
1925	74	179,300,000	1933	224	156,700,000
1926	79	183,900,000	1934	4	198,500,000
1927	68	197,600,000	1935	3	200,300,000
1928	48	215,300,000	1936	6	203,300,000
1929	62	215,500,000			

TABLE VI.—*Farm cash income*[1] *and registrations of new motor cars*[2] *in principal tobacco-producing States*

	1928–29	1929–30	1930–31	1931–32	1932–33	1933–34	1934–35	1935–36
Virginia:								
Farm income	146	156	104	83	62	78	91	106
Registrations	65	68	46	32	22	34	50	61
North Carolina:								
Farm income	279	231	177	116	98	171	219	217
Registrations	74	56	36	26	22	48	65	88
South Carolina:								
Farm income	117	121	97	61	48	70	82	91
Registrations	34	30	19	11	10	23	27	39
Georgia:								
Farm income	193	207	156	90	54	103	120	134
Registrations	43	40	31	21	19	39	47	55
Kentucky:								
Farm income	175	172	118	91	74	81	95	107
Registrations	56	52	32	22	19	31	39	50
Tennessee:								
Farm income	161	161	109	85	67	85	95	102
Registrations	55	55	31	19	16	30	44	52

[1] Farm cash income covers crop year for crops and calendar year for livestock and livestock products. Rental and benefit payments made under Agricultural Adjustment Administration not included. Source: Bureau of Agricultural Economics.

[2] Registrations of new passenger cars and new commercial cars covering the period July-June. Source: R. L. Polk & Co., Detroit, Mich.

C. S. Rept. 1295, 75TH CONG., 2D SESS.

CALENDAR NO. 1347

75th CONGRESS, 2d Session — SENATE — REPORT No. 1295

PROVIDING AN ADEQUATE AND BALANCED FLOW OF THE MAJOR AGRICULTURAL COMMODITIES IN INTERSTATE AND FOREIGN COMMERCE, AND FOR OTHER PURPOSES

NOVEMBER 16 (calendar day, NOVEMBER 22), 1937.—Ordered to be printed with an illustration

Mr. SMITH, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany S. 2787]

The Committee on Agriculture and Forestry, to whom was referred the bill (S. 2787) providing for an adequate and balanced flow of the major agricultural commodities in interstate and foreign commerce (Agricultural Adjustment Act of 1937), having considered the same, report thereon favorably with a recommendation that the bill, as amended, do pass.

A subcommittee composed of Mr. Smith, Mr. McGill, Mr. Bankhead, Mr. Bilbo, and Mr. Ellender was appointed by the chairman to draft the committee report to accompany this bill.

In the bill it is declared to be the policy of Congress to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an adequate and balanced flow of such commodities. Such a flow can follow

only from the leveling out of the recurring surpluses and shortage, that burden and obstruct interstate and foreign commerce in such products.

One of the results of such a policy will be the maintenance of parity prices to farmers for cotton, wheat, corn, tobacco, and rice domestically consumed and exported and parity of income for farmers engaged in marketing such commodities. Parity prices are those which will give the farmer as great a purchasing power for his cotton, wheat, corn, tobacco, and rice as those commodities had during the base period 1909–14, or in case of tobacco 1919–29. Further without interfering with such prices adequate supplies will be maintained in years of drought, flood, or other adverse conditions as well as in years of plenty, i. e., an ever-normal granary that will protect consumers from unreasonably high prices. Finally our national soil resources will be conserved and wasteful use of our soil fertility prevented.

* * * * *

TITLE IV.—TOBACCO

This title provides for regulation of the marketing of tobacco. It comes into operation only when abnormally excessive supplies are found to exist. It provides for such regulation through the establishment of marketing quotas for tobacco and for the collection of penalties from those who acquire from producers tobacco marketed in excess of the marketing quota for the producer's farm. The definitions found in title VI, section 61, are applicable to this title. General provisions for its administration are found in sections 62 and 63. It applies

separately to flue-cured, fire-cured, dark air-cured, burley, Maryland, and cigar filler and binder tobacco as distinct kinds of tobacco.

Section 40. This section is a finding by Congress of the basic facts which give rise to the need for the regulation of tobacco marketings. It contains findings that the marketing of tobacco is one of the great basic industries of the United States, that tobacco is sold on a Nationwide market and, with its products, moves almost wholly in interstate and foreign commerce; that the marketing of tobacco directly affects interstate commerce; and that stable conditions in the industry are necessary to the general welfare. These findings stated in general terms are fully supported by the statistics available to show the scope and character of the business of distributing tobacco from producers to consumers.

The section contains the further finding that farmers producing tobacco are widely scattered throughout the Nation, that their operations are subject to natural forces beyond their control, that in many cases they carry on their operations on leased land and borrowed money, and that in general they are not in a position, without Federal assistance, to so coordinate their operations as to be able to control effectively the orderly marketings of tobacco. The section contains a finding that these conditions result in abnormally excessive supplies of tobacco being produced and dumped indiscriminately on the national market.

Subsection (b) contains a finding that the disorderly marketing of these excessive supplies burdens and obstructs interstate commerce in tobacco by materially affecting the volume of tobacco marketed in interstate commerce, and by disrupting

the orderly marketing of tobacco in interstate commerce. These two results of excessive supplies are practically axiomatic. There is a further finding that the marketing of abnormally excessive supplies reduces the price of tobacco and ultimately is injurious to commerce in tobacco. The marketing of excessive supplies of tobacco has been consistently accompanied by reduced prices. Experience has shown that excessive reduction in the amount produced follows the marketing of exceedingly large crops at low prices, with consequent excessive increase in prices and restriction of volume in subsequent marketing seasons.

There is a further finding that the reductio in price of tobacco caused by the marketing of excessive supplies results in a reduction of interstate commerce in industrial products. Long experience has demonstrated that farmers' purchases of commodities which flow in interstate commerce are acutely and directly affected by the amount of money they get from the sale of their products, and that commerce in industrial products is affected adversely by the low farm incomes which result from the marketing of excessively large crops at disastrous prices. The section concludes with a finding that the provision made for regulating the marketing of tobacco by producers becomes necessary whenever abnormally excessive supplies of tobacco exist. It is to be noted that the marketing quotas provided for in the title are not continuously effective. They come into operation only when the supply of tobacco is more than enough to meet normal requirements for domestic consumption and exports and to maintain stocks adequate to meet requirements when adverse condi-

tions cut production below consumption. This quantity, as defined in the act, consists of a normal year's domestic consumption and exports plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports, which is defined in the act as normal production, plus an additional reserve supply of 5 percent of this normal production. This level is called the reserve level.

Section 41 provides the mechanics for making the quotas effective. It requires the Secretary to proclaim the amount of the total supply of tobacco not later than December 1 of any year in which, prior to November 15, he has found that the total supply exceeds the reserve supply level. It provides that in such a case he shall specify the amount of a national marketing quota in terms of the total quantity of tobacco which may be marketed. The amount is to be such as will make available for marketing a supply equal to the reserve supply level. The quota so determined becomes effective during the next succeeding marketing year.

The section also requires the Secretary to conduct a referendum within 30 days after he issues the proclamation, to determine whether farmers who will be subject to the marketing quota favor or oppose it. It provides that if he finds that more than one-third oppose the quota, he shall proclaim that fact before the 1st of January, whereupon the quota previously announced becomes ineffective. The section provides that any quota for the 1938–39 marketing year may be made effective by an announcement by the Secretary not later than February 1, 1938, and that the results of the referendum

may be deferred in that year until not later than the 1st of March.

Section 42 provides for the apportionment of the national marketing quota among the States on the basis of the total production of tobacco in each State during the preceding 5 calendar years. It provides that this apportionment shall take into account tobacco base acreages and goals established under previous agricultural adjustment and conservation programs and requires that adjustments be made for abnormal conditions of production, for small farms, and for trends during the 5-year period. These provisions are designed to make possible a fairer apportionment than would result from the use of a purely mathematical basis. The section provides also for the use of not in excess of 3 percent of the marketing quota for any State for allotment among farms in the State on which tobacco is being produced for the first time in 10 years. It provides that the apportionment of this 3 percent shall be based upon the land, labor, and equipment available for the production of tobacco on such farms, the crop-rotation practices that have been employed on such farms, and the soil and other physical factors on such farms which affect their capacity to produce tobacco. The quotas for such farms are required to be limited to not more than 75 percent of the quotas established for farms which have a similar capacity to produce tobacco but which have produced tobacco during the 10-year period.

Subsection (d) provides that marketing quotas may be transferred, but only subject to such conditions and in such manner as the Secretary may prescribe.

Section 43 (a) provides that a marketing quota may be increased if the Secretary finds that its operation is preventing a normal supply of tobacco from becoming available.

Subsection (b) provides for the termination of any marketing quota if the Secretary finds such termination necessary because of an increased demand resulting from a war on national emergency.

Section 44 prescribes a penalty, payable by any person who knowingly acquires tobacco marketed by a producer from a farm in excess of the marketing quota. The penalty is 50 percent of the market price of the tobacco on the day of such acquisition or 3 cents per pound in case of flue-cured, Maryland, or burley tobacco, and 2 cents per pound in case of all other tobacco, if these per-pound rates are higher than 50 percent of the market price. A purchaser is permitted to deduct the amount of the penalty from the purchase price.

Subsection (b) provides that the Secretary may require persons having to do with the production, marketing, and processing of tobacco to keep records and report information necessary to enable him to carry out the provisions of the title. It provides also for the examination of books and records which the Secretary has reason to believe are relevant to a determination of the correctness of any such report or record or to the obtaining of information required to be furnished in any report. The section also provides a fine for any person failing to make any report or keep any such records required or making a false report or record.

Subsection (c) confers jurisdiction upon the district courts of the United States to enforce the provisions of the section and imposes a duty upon district attorneys to commence proceedings to collect the penalties, if and when the Secretary requests them to do so. The section provides also that the remedies and penalties of the section are additional to existing remedies and penalties.

Subsection (d) requires that all information required by the Secretary pursuant to the section be kept confidential, except that it may be disclosed in a suit or hearing involving the administration of the marketing-quota provisions for tobacco.

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U. S. GOVERNMENT PRINTING OFFICE: 1939

SUPREME COURT OF THE UNITED STATES.

No. 505.—October Term, 1938.

James H. Mulford, et al., Appellants, *vs.* Nat Smith, et al.	Appeal from the District Court of the United States for the Middle District of Georgia.

[April 17, 1939.]

Mr. Justice Roberts delivered the opinion of the Court.

The appellants, producers of flue-cured tobacco, assert that the Agricultural Adjustment Act of 1938,[1] is unconstitutional as it affects their 1938 crop.

The portions of the statute involved are those included in Title III, providing marketing quotas for flue-cured tobacco.[2] The Act directs that when the supply is found to exceed the level defined in the Act as the "reserve supply level" a national marketing quota shall become effective which will permit enough flue-cured tobacco to be marketed during the ensuing marketing year to maintain the supply at the reserve supply level. The quota is to be apportioned to the farms on which tobacco is grown. Penalties are to be paid by tobacco auction warehousemen for marketing tobacco from a farm in excess of its quota.

Section 311 is a finding by the Congress that the marketing of tobacco is a basic industry which directly affects interstate and foreign commerce; that stable conditions in such marketing are necessary to the general welfare; that tobacco is sold on a national market and it and its products move almost wholly in interstate and foreign commerce; that without federal assistance the farmers are unable to bring about orderly marketing, with the consequence

[1] 52 Stat. 31, as amended March 26, 1938, 52 Stat. 120, April 7, 1938, 52 Stat. 202, May 31, 1938, 52 Stat. 586, and June 20, 1938, 52 Stat. 775; U. S. C. Supp. IV, Title 7, §§ 1281, *et seq.*

[2] Title III, Subtitle B, Marketing Quotas, Part I, marketing quotas—tobacco, §§ 311-314, inclusive. See also § 301, Definitions. §§ 361-375, inclusive, administrative provisions; §§ 388 and 389 relating to personnel.

that abnormally excessive supplies are produced and dumped indiscriminately on the national market; that this disorderly marketing of excess supply burdens and obstructs interstate and foreign commerce, causes reduction in prices and consequent injury to commerce, creates disparity between the prices of tobacco in interstate and foreign commerce and the prices of industrial products in such commerce, and diminishes the volume of interstate commerce in industrial products; and that the establishment of quotas as provided by the Act is necessary and appropriate to promote, foster and obtain an orderly flow of tobacco in interstate and foreign commerce.

There is no provision for continuous regulation of tobacco marketing, but, by Section 312(a), regulation becomes effective in any year only if, on November 15th, the Secretary finds that the total supply of tobacco as of July 1st exceeded the reserve supply level which is defined in the Act.[3] If he so finds, he shall, by December 1st, proclaim the total supply and a national marketing quota shall be in effect throughout the marketing year which commences the following July 1st. The quota is to be the amount which the Secretary finds will make available during the ensuing marketing year a supply of tobacco equal to the reserve supply level. As it was not passed until after November 15, 1937, the Act provided, with respect to the marketing year beginning July 1, 1938, for which the quotas involved in this case were in effect, that the determination and proclamation of the national marketing quota should be made within fifteen days after the statute's approval.[4]

Within thirty days after proclamation, the Secretary is to conduct a referendum of the producers of the crop of the preceding year to ascertain whether they favor or oppose the imposition of a quota. If more than one-third oppose, the Secretary is to proclaim the result before January 1st and the quota is not to be effective.[5]

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[3] The total supply, the carry-over for a marketing year, the reserve supply level, the normal supply, a normal year's domestic consumption, and a normal year's exports, are defined in Section 301.

[4] Section 312(d).

[5] Section 312(c). With respect to 1938 quotas, the proclamation of the result of the referendum was to be made within forty-five days after approval of the Act. Section 312(d).

By Section 313(a) it is directed that the quota is to be first apportioned among the states based on the total quantity of tobacco produced in each state during the five years immediately preceding the year in question, plus the normal production of any acreage diverted under any agricultural adjustment and conservation program in any of the years. The basic determination is to be adjusted to correct state allotments, giving due consideration to seed bed or other plant diseases, production trends, or abnormal producing conditions which affected production in the several states during the five-year period, and to make required provision for allotments to small farms. A limit is set below which the quota of any state may not be reduced.

The Act provides for the apportionment of the state allotment amongst the farms which produced tobacco in the current year or have produced previously in one or more of the four preceding years. Apportionment to these farms is to be made on the basis of past marketing, after due allowance for drought, flood, hail, and other abnormal weather conditions, plant bed and other diseases, land, labor, and equipment available for the production of tobacco, crop-rotation practices, and soil and other physical factors affecting production. A limit is fixed below which the adjustment may not reduce the production of a given farm. Allotment to new tobacco farms is to be made on a slightly different basis.[6]

Apportionment of the quota amongst individual farms is to be by local committees of farmers according to standards prescribed in the Act, amplified by regulations and instructions issued by the Secretary. Each farmer is to be notified of his marketing quota and the quotas of individual farms are to be kept available for public inspection in the county or district where the farm is located. If the farmer is dissatisfied with his allotment he may have his quota reviewed by a local review committee, and, if dissatisfied with the determination of that committee, he may obtain judicial review.

Section 314 provides that if tobacco in excess of the quota for the farm on which the tobacco is produced is marketed through a warehouseman, the latter must pay to the Secretary a penalty equal to fifty per cent. of the market price of the excess, and may

[6] Sections 313(b) and 313(c).

deduct an amount equivalent to the penalty from the price paid the producer.[7]

Section 376 gives the United States a civil action for the recovery of unpaid penalties.[8]

A few days before the 1938 auction sales were to take place, the appellants, who produce flue-cured tobacco in southern Georgia and northern Florida, filed a bill in equity in a Georgia state court against local warehousemen to restrain them from deducting penalties under the Act from the sales price of tobacco to be sold at their auction warehouses on behalf of appellants. The bill alleged that the Act is unconstitutional; that it illegally commands the defendants to deduct penalties, pay them over to the Secretary, who must cover them into the treasury of the United States; that, if the defendants should make the required payments, the amounts paid by them would aggregate so large a sum that they would be unable to satisfy judgments in actions brought to recover the illegal payments. The court granted a preliminary injunction and ordered the defendant warehousemen to pay the amounts of the penalties into the registry of the court. The cause was removed to the United States District Court for the Middle District of Georgia. The District Court continued the injunction, modified the order to require the payments to be made into its registry, the auction sales were held, and payments into the court were made. The United States was permitted to intervene as a defendant.[9] The warehousemen and the United States filed answers. The cause was set down before a court consisting of three judges,[10] which heard it on a stipulation of facts and entered a decree dismissing the bill.[11]

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7 If the tobacco is marketed directly to a person outside the United States, the producer is required to pay the penalty. If the tobacco is sold by the grower directly to a purchaser without intervention by the warehouseman or other agent, the buyer is required to pay the penalty, but may deduct an equivalent amount from the purchase price. Sections 314, 372, 373. The penalty is to be three cents per pound if that rate is higher than 50% of the market price. Section 314.

8 The Secretary may make regulations necessary for identifying tobacco subject to quotas, Section 375; and requiring the keeping of records and the making of reports. The Act imposes upon handlers other than producers a fine of $500 upon conviction of failure to make any report or keep any record, or for making any false report or record. Section 373(a) and (b).

9 Act of August 24, 1937, c. 754, Sec. 1, 50 Stat. 751; U. S. C. Supp. III, Tit. 28, § 401.

10 *Ibid*, U. S. C. Supp. III, Tit. 28, § 380(a).

11 24 F. Supp. 919.

Before coming to the merits we inquire whether the court below had jurisdiction as a federal court or as a court of equity. Though no diversity of citizenship is alleged, nor is any amount in controversy asserted so as to confer jurisdiction under subsection (1)[12] of Section 24 of the Judicial Code, the case falls within subsection (8)[13] which confers jurisdiction upon District Courts "of all suits and proceedings arising under any law regulating commerce." Maintenance of the bill for injunction is not forbidden by R. S. 3224,[14] which applies only to a suit to restrain assessment or collection of a tax. Under the averments of the bill the defendant warehousemen would be wrongdoers if they deducted and paid over the prescribed penalties, but no action at law would be adequate to redress the damage thus inflicted. It appears that the total of the penalties involved in this suit is some $374,000. The allegation that the warehousemen would be unable to respond in actions for sums aggregating this amount has, therefore, reasonable basis. Before any such action could be initiated the penal sum would have been paid to the Secretary of Agriculture and by him to the Treasurer of the United States and covered into the general funds of the Treasury. No action could be maintained against the warehousemen or either of these officials for disposing of the penal sums in accordance with the terms of the Act unless prior notice not to do so had been served upon each of them. In the light of the fact that the appellants received notice of their quotas only a few days before the actual marketing season opened, the maintenance of actions based upon collection of the penalties would have been a practical impossibility. We are of opinion, therefore, that a case is stated for the interposition of a court of equity.

The appellants plant themselves upon three propositions: (1) that the Act is a statutory plan to control agricultural production and, therefore, beyond the powers delegated to Congress; (2) that the standard for calculating farm quotas is uncertain, vague, and indefinite, resulting in an unconstitutional delegation of legislative power to the Secretary; (3) that, as applied to appellants' 1938 crop, the Act takes their property without due process of law.

First. The statute does not purport to control production. It sets no limit upon the acreage which may be planted or produced

[12] U. S. C. Tit. 28, § 41(1).
[13] U. S. C. Tit. 28, § 41(8).
[14] U. S. C. Tit. 26, § 1543.

and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. It purports to be solely a regulation of interstate commerce, which it reaches and affects at the throat where tobacco enters the stream of commerce,—the marketing warehouse.[15] The record discloses that at least two-thirds of all flue-cured tobacco sold at auction warehouses is sold for immediate shipment to an interstate or foreign destination. In Georgia nearly one hundred per cent. of the tobacco so sold is purchased by extrastate purchasers. In markets where tobacco is sold to both interstate and intrastate purchasers it is not known, when the grower places his tobacco on the warehouse floor for sale, whether it is destined for interstate or intrastate commerce. Regulation to be effective, must, and therefore may constitutionally, apply to all sales.[16] This court has recently declared that sales of tobacco by growers through warehousemen to purchasers for removal outside the state constitute interstate commerce.[17] Any rule, such as that embodied in the Act, which is intended to foster, protect and conserve that commerce, or to prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress. Within these limits the exercise of the power, the grant being unlimited in its terms, may lawfully extend to the absolute prohibition of such commerce,[18] and a fortiori to limitation of the amount of a given commodity which may be transported in such commerce. The motive of Congress in exerting the power is irrelevant to the validity of the legislation.[19]

The provisions of the Act under review constitute a regulation of interstate and foreign commerce within the competency of Congress under the power delegated to it by the Constitution.

Second. The appellants urge that the standard for allotting farm quotas is so uncertain, vague, and indefinite that it amounts to a delegation of legislative power to an executive officer and thus

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[15] Currin *v.* Wallace, No. 275 Oct. T. 1938; compare Townsend *v.* Yeoman, 301 U. S. 441.

[16] The Minnesota Rate Cases, 230 U. S. 352; The Shreveport Case, 234 U. S. 342; Currin *v.* Wallace, *supra.*

[17] Currin *v.* Wallace, *supra;* and see Dahnke-Walker Co. *v.* Bondurant, 257 U. S. 282, 290; Shafer *v.* Farmers Grain Co., 268 U. S. 189, 198. Compare Lemke *v.* Farmers Grain Co., 258 U. S. 50.

[18] Champion *v.* Ames, 188 U. S. 321; Hipolite Egg Co. *v.* United States, 220 U. S. 45; Hoke *v.* United States, 227 U. S. 308; Brooks *v.* United States, 267 U. S. 432; Gooch *v.* United States, 297 U. S. 124.

[19] Story, Commentaries on the Constitution (4th Ed.), Secs. 965, 1079, 1088, 1089.

violates the Constitutional requirement that laws shall be enacted by the Congress.

What has been said in summarizing the provisions of the Act sufficiently discloses that definite standards are laid down for the government of the Secretary, first, in fixing the quota and, second, in its allotment amongst states and farms. He is directed to adjust the allotments so as to allow for specified factors which have abnormally affected the production of the state or the farm in question in the test years. Certainly fairness requires that some such adjustment shall be made. The Congress has indicated in detail the considerations which are to be held in view in making these adjustments, and, in order to protect against arbitrary action, has afforded both administrative and judicial review to correct errors. This is not to confer unrestrained arbitrary power on an executive officer. In this aspect the Act is valid within the decisions of this court respecting delegation to administrative officers.[20]

Third. In support of their contention that the Act, as applied to the crop year 1938, deprives them of their property without due process of law in violation of the Fifth Amendment, the appellants rely on the following undisputed facts.

Tobacco growers in southern Georgia and northern Florida began to arrange for the planting of their 1938 crop in December, 1937, when it was necessary for them to prepare beds for the planting of the seeds. Thereafter it was necessary to cultivate the seed beds, sow and water the seed, cover the beds with cloth, and otherwise care for the plants until they were large enough to be transplanted. At the date of approval of the Act each of the plaintiffs had planted his seed beds and, about the middle of March, began transplanting into the fields, which were prepared and fertilized at large expense. The plants were thereafter cultivated and sprayed, and harvesting began during June and continued during July, followed by the curing and grading of the tobacco.

All of these activities involved labor and expense. The production of flue-cured tobacco requires, at prevailing price levels, a cash outlay of between thirty and forty dollars per acre for fertilizer, plant bed covering, twine, poison, etc. The use of animals and permanent and semi-permanent equipment demands an aver-

[20] United States *v.* Grimaud, 220 U. S. 506; Avent *v.* United States, 266 U. S. 127; Hampton & Co. *v.* United States, 276 U. S. 394; New York Central Securities Corp. *v.* United States, 287 U. S. 12; Currin *v.* Wallace, *supra*.

age expenditure, over a period of years, ranging from twenty to thirty dollars an acre. The labor expended per acre is between three hundred and four hundred man-hours. The total cost per pound varies from ten cents to twenty cents.

The marketing season for flue-cured tobacco in Georgia and Florida commences about August 1st of each year. Each of the appellants was notified of the quota of his farm shortly before the opening of the auction markets. Prior to the receipt of notice each of them had largely, if not wholly, completed planting, cultivating, harvesting, curing and grading his tobacco. Until receipt of notice none knew, or could have known, the exact amount of his quota, although, at the time of filing the bill, each had concluded from available information that he would probably market tobacco in excess of any quota for his farm.

The Act was approved February 16, 1938. The Secretary proclaimed a quota for flue-cured tobacco on February 18th and, on the same date, issued instructions for holding a referendum on March 12th. March 25th the Secretary proclaimed the result of the referendum which was favorable to the imposition of a national marketing quota. In June he issued regulations governing the fixing of farm quotas within the states. July 22nd he determined the apportionment as between states and issued regulations relative to the records to be kept by warehousemen and others. Shortly before the markets opened each appellant received notice of the allotment to his farm.

On the basis of these facts it is argued that the statute operated retroactively and therefore amounted to a taking of appellants' property without due process. The argument overlooks the circumstance that the statute operates not on farm production, as the appellants insist, but upon the marketing of their tobacco in interstate commerce. The law, enacted in February, affected the marketing which was to take place about August 1st following, and so was prospective in its operation upon the activity it regulated. The Act did not prevent any producer from holding over the excess tobacco produced, or processing and storing it for sale in a later year; and the circumstance that the producers in Georgia and Florida had not provided facilities for these purposes is not of legal significance.

The decree is affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 505.—October Term, 1938.

James H. Mulford, et al., Appellants, vs. Nat Smith, et al. — Appeal from the District Court of the United States for the Middle District of Georgia.

[April 17, 1939.]

Mr. Justice Butler, dissenting.

Plaintiffs are farmers in Georgia and on their farms raise tobacco. They sell it in the market year when produced because, in their circumstances, they are unable to process and make it fit to be held for sale in a later year. The sales are at auction markets, through defendants who are Georgia warehousemen, to purchasers intending to take the tobacco outside the State. The Secretary of Agriculture, assuming to be empowered by the Agricultural Adjustment Act of 1938, undertook to prescribe the amount of flue-cured tobacco to be raised in 1938 in the United States, in each State, and on each farm. He failed to let plaintiffs know the quotas respectively assigned to them until after their crops had matured and were ready for marketing. Each raised more than the assigned quota.

The Act declares that, if more than the amount fixed for a farm is marketed, the warehouseman shall pay to the Secretary a penalty equal to one-half the price of the excess, but it authorizes him to retain that amount from the farmer raising and bringing it to market for sale. If, without resort to a warehouseman, the farmer sells directly to one in this country, the purchaser is required to pay the penalty but is authorized to take the amount from the purchase price. If the farmer sells directly to one outside the United States he is required to pay the penalty to the Secretary. Thus, in any event, the penalty is effectively laid upon the farmer. Enforcement of the Act will compulsorily take from plaintiffs an amount of money equal to one-half of the market value of all tobacco raised and sold by them in excess of the prescribed quotas.

In *United States* v. *Butler*, 297 U. S. 1, we held the federal government without power to control farm production. We condemned the statutory plan there sought to be enforced as repugnant to the Tenth Amendment. That scheme was devised and put in effect under the guise of exertion of power to tax. We held it to be in excess of the powers delegated to the federal government; found the tax, the appropriation of the money raised, and the directions for its disbursement, to be but the means to an unconstitutional end; showed that the Constitution confers no power to regulate production and that therefore legislation for that purpose is forbidden; emphasized the principle established by earlier decisions that a prohibited end may not be attained under pretext of exertion of powers which are granted; and finally we declared that, if Congress may use its power to tax and to spend compulsorily to regulate subjects within the reserved power of the States, that power "would become the instrument for total subversion of the governmental powers reserved to the individual States."

After failure of that measure, Congress, assuming power under the commerce clause, enacted the provisions authorizing the quota and penalties the validity of which is questioned in this case. Plaintiffs contend that the Act is a plan to control agricultural production and therefore beyond the powers delegated to Congress. The Court impliedly concedes that such a plan would be beyond congressional power, but says that the provisions do not purport to control production, set no limit upon the acreage which may be planted or produced and impose no penalty upon planting and production in excess of marketing quota. Mere inspection of the statute and Secretary's regulations unmistakably disclose purpose to raise price by lessening production. Whatever may be its declared policy or appearance, the enactment operates to control quantity raised by each farmer. It is wholly fallacious to say that the penalty is not imposed upon production. The farmer raises tobacco only for sale. Punishment for selling is the exact equivalent of punishment for raising the tobacco. The Act is therefore invalid. *United States* v. *Butler*, 297 U. S. 1. *Hammer* v. *Dagenhart*, 247 U. S. 251. See *Brooks* v. *United States*, 267 U. S. 432, 438; *Ky. Whip & Collar Co.* v. *I. C. R. Co.*, 299 U. S. 334, 350. Cf. *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 362, *et seq.*

Assuming that, under *Currin* v. *Wallace*, 305 U. S. —, plaintiffs' sales in interstate commerce at defendants' auction markets are to be deemed subject to federal power under the commerce clause, the Court now rules that, within suggested limits so vague as to be unascertainable, the exercise of power under that clause, "the grant being unlimited in its terms, may lawfully extend to the absolute prohibition of such commerce and a fortiori to limitation of the amount of a given commodity which may be transported in such commerce."

That ruling is contrary alike to reason and precedent. To support it, the Court merely cites the following cases:

The Lottery Case, (*Champion* v. *Ames*) 188 U. S. 321, held that an Act of Congress prohibiting transportation of lottery tickets in interstate commerce is not inconsistent with any limitation or restriction imposed upon exercise of the powers granted to Congress. After demonstrating the illicit character of lottery tickets, the Court said (p. 357): "We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, cannot be met and crushed by the only power competent to that end. . . . [p. 358] It is a kind of traffic which no one can be entitled to pursue as of right."

Hipolite Egg Co. v. *United States,* 220 U. S. 45, held within federal power the provisions of the Food and Drug Act forbidding transportation in interstate commerce of food "debased by adulteration" and authorizing articles so transported to be seized as contraband.

Hoke v. *United States,* 227 U. S. 308, sustained congressional prohibition of interstate transportation of women for immoral purposes.

Brooks v. *United States,* 267 U. S. 432, upheld a statute of the United States making it a crime to transport a stolen automobile in interstate commerce.

Gooch v. *United States,* 297 U. S. 124, construed an Act of Congress making it a crime to transport a kidnapped person in interstate commerce.

Plainly these cases give no support to the view that Congress has power generally to prohibit or limit, as it may choose, transportation in interstate commerce of corn, cotton, rice, tobacco, or wheat. Our decisions establish the contrary:

Wilson v. *New*, 243 U. S. 332, upheld an Act regulating hours of service of employees of interstate carriers by rail. The Court following the teaching of earlier decisions, said (p. 346): "The extent of regulation depends on the nature and character of the subject and what is appropriate to its regulation. The powers possessed by government to deal with a subject are neither inordinately enlarged or greatly dwarfed because the power to regulate interstate commerce applies. This is illustrated by the difference between the much greater power of regulation which may be exerted as to liquor and that which may be exercised as to flour, dry-goods and other commodities. It is shown by the settled doctrine sustaining the right by regulation absolutely to prohibit lottery tickets and by the obvious consideration that such right to prohibit could not be applied to pig iron, steel rails, or most of the vast body of commodities."

Hammer v. *Dagenhart*, 247 U. S. 251, held repugnant to the commerce clause and to the Tenth Amendment an Act prohibiting transportation in interstate commerce of articles made at factories in which child labor was employed. The Court said (p. 271): "In other words, the power [granted by the commerce clause] is one to control the means by which commerce is carried on, which is directly the contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities. But it is insisted that the adjudged cases in this court establish the doctrine that the power to regulate given to Congress incidentally includes the authority to prohibit the movement of ordinary commodities and therefore that the subject is not open for discussion. The cases demonstrate the contrary. They rest upon the character of the particular subjects dealt with and the fact that the scope of governmental authority, state or national, possessed over them is such that the authority to prohibit is as to them but the exertion of the power to regulate. . . . [p. 276] In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States, a purely state authority. Thus the act in a twofold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce but also exerts a power as to a purely local matter to which the federal authority

does not extend. The far reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters entrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the States over local matters may be eliminated, and thus our system of government be practically destroyed".

Heretofore, in cases involving the power of Congress to forbid or condition transportation in interstate commerce, this Court has been careful to determine whether, in view of the nature and character of the subject, the measure could be sustained as an appropriate regulation of commerce.* If Congress had the absolute power now attributed to it by the decision just announced, the opinions in these cases were unnecessary and utterly beside the mark.

For reasons above suggested, I am of opinion:

The penalty is laid on the farmer to prevent production in excess of his quota. It is therefore invalid.

If the penalty is imposed for marketing in interstate commerce, it is a regulation not authorized by the commerce clause.

To impose penalties for marketing in excess of quotas not disclosed before planting and cultivation is to deprive plaintiffs of their liberty and property without due process of law.

The judgment of the district court should be reversed.

Mr. Justice McREYNOLDS concurs in this opinion.

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*Lottery Case, 188 U. S. 321, 355 *et seq.* United States *v.* Delaware & Hudson Co., 213 U. S. 366, 415. Hipolite Egg Co. *v.* United States, 220 U. S. 45, 57-58. Hoke *v.* United States, 227 U. S. 308, 321-323. Seven Cases *v.* United States, 239 U. S. 510, 514. Caminetti *v.* United States, 242 U. S. 470, 491-492. Hammer *v.* Dagenhart, 247 U. S. 251, 270 *et seq.* Brooks *v.* United States, 267 U. S. 432, 436-438. See Wilson *v.* New, 243 U. S. 332, 346. Cf. Clark Distilling Co. *v.* Western Md. Ry. Co., 242 U. S. 311, 325. United States *v.* Hill, 248 U. S. 420. Ky. Whip & Collar Co. *v.* I. C. R. Co., 299 U. S. 334, 346 *et seq.*